

Exhibit 1

Minutes from Board of Supervisors Meeting of January 19, 2016

Certificate of Clerk

Board of Supervisors of Pima County, Arizona

State of Arizona

County of Pima ^{ss}

I, Robin Brigode, the duly appointed, and qualified, Clerk of the Board of Supervisors of Pima County, Arizona, hereby certify that the following is a true and correct copy of the minutes of a meeting of the Board of Supervisors held on the 19th day of January, 2016, and that a quorum was present thereat.

(See attached Minutes, pages 1 thru 29)

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Board of Supervisors of Pima County, Arizona, this 23rd day of August, 2016.

Robin Brigode

Clerk

It was moved by Supervisor Elías and seconded by Supervisor Valadez to approve the appointment of Matt Kopec to fill the vacancy for Arizona Legislative District 9. Upon roll call, the motion carried by a 4-1 vote, Supervisor Miller voted "Nay."

26. Trans Pacific Partnership

RESOLUTION NO. 2016 - 2, of the Board of Supervisors, opposing the proposed Trans Pacific Partnership, any similar new trade agreements, and the extension of disastrous past trade agreements. (District 5)

It was moved by Supervisor Elías and seconded by Supervisor Valadez to adopt the Resolution. Upon roll call, the motion carried by a 5-0 vote.

COUNTY ADMINISTRATOR

27. World View Enterprises, Inc., Corporate Headquarters in the County Aerospace, Defense and Technology Research and Business Park

Staff recommends the following:

1. Approve the Lease/Purchase Agreement, including the Purchase Option, between Pima County and World View Enterprises, Inc., for the development of their manufacturing and administrative headquarters in the Aerospace, Defense and Technology Business and Research Park. The Lease/Purchase Agreement contains a provision for a separate first right of refusal purchase option for six acres immediately west of World View's manufacturing and administration complex for future expansion.
2. Approve the issuance of Certificates of Participation in an amount not to exceed \$15 million for the development, design, and construction of the World View Enterprises, Inc. manufacturing and administrative headquarters.
3. Approve the SpacePort Operating Agreement related to World View's operation of the spaceport on behalf of Pima County and authorize all necessary actions of the County to apply for a spaceport license and approval from the Federal Aviation Administration, as well as a construction-in-aid grant from the Aeronautic Division of the Arizona Department of Transportation to supplement County funding for construction of the spaceport.
4. Make the following awards:
 - A. Swaim Associates, Ltd. Architects, AIA (Headquarters: Tucson, AZ); not to exceed \$850,000.00, including a \$50,000.00 contingency; contract term January 19, 2016 through February 28, 2017; for architectural and engineering design services.
 - B. Barker Morrissey Contracting, Inc. (Headquarters: Tucson, AZ); not to exceed \$12,400,000.00, including attached fixtures and equipment and an \$800,000.00 contingency; contract term January 19, 2016

through February 28, 2017; for construction manager at-risk services for both preconstruction and construction services.

5. Approval for the Procurement Director to execute any and all contracts, amendments and change orders to the contracts listed above within the dollar and term limits awarded by this action. Any amendment or change order resulting in a contract value or term in excess of the Board award will be submitted to the Board for approval.

Jayne Poynter and Taber MacCallum, World View Enterprises, Inc., provided a presentation on World View Enterprises to the Board.

The following speakers addressed the Board:

- Keith Van Heyningen
- Brad Johns
- Adriana Moerkerken
- Joe Boogart
- Justin Williams
- Carol Kovalik
- Joe Snell, President, Sun Corridor

They offered the following comments:

- It was unwise to spend taxpayer dollars on the property because the County was in debt and the road conditions were not good. This was a risky project, there was a substantial market risk with commercialization and data did not show how big the market was.
- This was a profit based business that expected help with County tax dollars and there were not enough private investors.
- The company expected high-based returns which shouldn't be the burden of the taxpayer.
- Research shows that all growth in jobs are started with these types of companies.
- Due diligence was a concern.
- The Sun Corridor Board of Directors were in support of the project, which would provide opportunity for more business

It was moved by Supervisor Valadez and seconded by Supervisor Carroll to approve the item. Upon roll call, the motion carried by a 4-1 vote, Supervisor Miller voted "Nay."

FINANCE AND RISK MANAGEMENT

28. Request for Exemption

Staff requests approval of the Request for Exemption from Requirement to Post Statutory Deposit for submission to the Industrial Commission of Arizona.

Exhibit 2

Pima County Contract with Swaim Associates

PIMA COUNTY FACILITIES MANAGEMENT DEPARTMENT		CONTRACT	
PROJECT:	Project Curvature	NO.	<u>CT-FM-16-237</u>
CONSULTANT:	Swaim Associates, Ltd. 7350 E. Speedway Blvd. #210 Tucson, AZ 85710	AMENDMENT NO.	_____
AMOUNT:	\$726,595.00	This number must appear on all invoices, correspondence and documents pertaining to this contract.	
FUNDING:	Certificates of Participation- 2016	(stamp here)	

CONSULTANT SERVICES CONTRACT

THIS Contract is entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY, and Swaim Associates, Ltd. hereinafter called CONSULTANT, collectively referred to as the Parties.

WITNESSETH

WHEREAS, COUNTY requires the services of a CONSULTANT registered in the State of Arizona and qualified to provide Architectural and Engineering Design Services for Project Curvature; and,

WHEREAS, CONSULTANT is qualified and willing to provide such services; and

WHEREAS, due to CONSULTANT'S past experience and knowledge specific to this project, it was determined under the emergency procurement provisions of A.R.S. §34-606 and Pima County Code 11.20.060 that a competitive procurement for this project would be contrary to the COUNTY's interests; and

WHEREAS, at its regularly scheduled meeting on January 19, 2016, the Board of Supervisors approved the award of the Contract to CONSULTANT and approved the Procurement Director to sign this Contract as well as future amendments to the Contract; and

WHEREAS, CONSULTANT has proposed to perform the work at a price acceptable to COUNTY.

NOW, THEREFORE, in consideration of the foregoing recitals and other valuable and good consideration the Parties agree as follows:

ARTICLE 1 – TERM AND EXTENSION/RENEWAL/CHANGES

This Contract as approved by the Board of Supervisors commences on January 19, 2016, and terminates on February 28, 2017, unless sooner terminated or further extended pursuant to the provisions of this Contract.

COUNTY has the option to extend the Contract termination date for project completion. Any modification or extension of the Contract termination date will be by formal written amendment executed by the Parties. The Procurement Director or the COUNTY Board of Supervisors, as required by the Pima County Procurement Code must approve change orders to the Contract or the Scope of Services before CONSULTANT performs the work authorized by the change order.

ARTICLE 2 – SCOPE OF SERVICES

CONSULTANT agrees to provide Architectural and Engineering Services for the Project for the COUNTY as described in **EXHIBIT A: SCOPE OF WORK** (8 pages) and as detailed by the Design Professional responsibilities included in **EXHIBIT B: GENERAL CONDITIONS** (45 pages), attachments to this Contract.

ARTICLE 3 – COMPENSATION AND PAYMENT

In consideration of the services specified in this Contract, COUNTY agrees to pay CONSULTANT Not to Exceed Seven Hundred Twenty Six Thousand Five Hundred Ninety Five Dollars (\$726,595.00). This not to exceed amount includes a \$50,000.00 design contingency to be used by the CONSULTANT only with prior written direction and approval of the County Project Manager. CONSULTANT'S fees are as stated in **EXHIBIT C: CONSULTANT FEE PROPOSAL** (5 pages) attached to this Contract. Hourly rates and all other rates included under this Contract will remain fixed throughout the term of the Contract. COUNTY may consider adjustments to rates in connection with any extensions of the Contract term.

Unless otherwise agreed, CONSULTANT will submit invoices monthly. As required by the COUNTY, all invoices will be accompanied by a narrative description of the work performed during the period covered by the invoice, time accounting information, and an allocation of all direct costs, including reimbursable costs and SUBCONSULTANT charges, to the tasks identified in the Scope of Work for which those costs were incurred. The time accounting information should be sufficient to show the workers and hours worked by day for the period covered by the invoice. SUBCONSULTANT charges will be supported by appropriate documentation with each separate invoice submitted.

For the period of record retention required under Article 22, COUNTY reserves the right to question any payment made under this article and to require reimbursement therefor by setoff or otherwise for payments determined to be improper or contrary to the Contract or law.

COUNTY and CONSULTANT may reallocate costs and proportionate fee between or among tasks by mutual agreement, provided that the transfer does not change the total amount of the Contract. CONSULTANT will not perform work in excess of the Contract Amount without prior authorization by an amendment executed by COUNTY. Work performed in excess of the Contract Amount without prior authorization by amendment is at CONSULTANT'S own risk.

ARTICLE 4 – INSURANCE

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. COUNTY in no way warrants that the minimum limits contained herein are sufficient to protect the CONSULTANT from liabilities that arise out of the performance of the work under this Contract. The CONSULTANT is free to purchase additional insurance.

CONSULTANT'S insurance will be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers will have an "A.M." Best" rating of not less than A- VII. COUNTY in no way warrants that the above-required minimum insurer rating is sufficient to protect the CONSULTANT from potential insurer insolvency.

4.1 Minimum Scope and Limits of Insurance:

CONSULTANT will procure and maintain, until all of their obligations have been discharged, coverage with limits of liability not less than those stated below.

4.1.1 Commercial General Liability (CGL) – Occurrence Form with limits of \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form contractual liability coverage, and products – completed operations.

4.1.2 Business Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000.

4.1.3 Workers' Compensation and Employers' Liability - Statutory requirements and benefits. Coverage is compulsory for employers of one or more employees. Employer's Liability - \$500,000.

Note: The Workers' Compensation requirement will not apply to a CONSULTANT that is exempt under A.R.S. § 23-901, and when such CONSULTANT executes the appropriate COUNTY Sole Proprietor or Independent CONSULTANT waiver form.

4.1.4 Professional Liability (Errors and Omissions) Insurance – This insurance is required when soliciting work from licensed professionals. The policy limits will be not less than \$2,000,000

Each Claim and \$2,000,000 Annual Aggregate. The policy will cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, CONSULTANT warrants that any retroactive date under the policy will precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.

Examples of Professional Services requiring E&O insurance: Accounting, Architecture, Asbestos Design, Inspection or Abatement Contractors, Licensed Health Care Practitioners, Legal Services, Engineering Services, or Surveying

4.2 Additional Insurance Requirements:

The policies will include, or be endorsed to include, as required by this written agreement, the following provisions:

- 4.2.1 Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies will each be endorsed to include COUNTY, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the CONSULTANT.
- 4.2.2 Subrogation Endorsement: The General Liability, Business Automobile Liability and Workers' Compensation Policies will each contain a waiver of subrogation endorsement in favor of COUNTY, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONSULTANT.
- 4.2.3 Primary Insurance Endorsement: The CONSULTANT'S policies will stipulate that the insurance afforded the CONSULTANT will be primary and that any insurance carried by the Department, its agents, officials, employees or COUNTY will be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 4.2.4 Insurance provided by the CONSULTANT will not limit the CONSULTANT'S liability assumed under the indemnification provisions of this Contract.

4.3 Notice of Cancellation:

For each insurance policy required by the insurance provisions of this Contract, the CONSULTANT must provide to COUNTY, within two (2) business days of receipt, a notice if a policy is suspended, voided, or cancelled for any reason. Such notice will be mailed, emailed, hand-delivered or sent by facsimile transmission to (Enter Contracting Agency Representative's Name, Address, and Fax Number here).

4.4 Verification of Coverage:

CONSULTANT will furnish COUNTY with certificates of insurance (valid ACORD form or equivalent approved by COUNTY) as required by this Contract. An authorized representative of the insurer will sign the certificates.

- 4.4.1 All certificates and endorsements, as required by this written agreement, are to be received and approved by COUNTY before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 4.4.2 All certificates required by this Contract will be sent directly to the Department. COUNTY project or contract number and project description will be noted on the certificate of insurance. COUNTY reserves the right to require complete copies of all insurance policies required by this Contract at any time.

4.5 Approval and Modifications:

COUNTY Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

ARTICLE 5 – INDEMNIFICATION

To the fullest extent permitted by law, CONSULTANT indemnifies and holds harmless COUNTY officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, including reasonable attorney's fees and court costs, to the extent caused by any negligent, reckless or intentionally wrongful act or omission of CONSULTANT, its agents, employees or anyone acting under its direction or control or on its behalf in connection with performance of this Contract. The obligations under this Article do not extend to the negligence of COUNTY its agents, employees or indemnities.

All warranty and indemnification obligations under this Contract survive expiration or termination of the Contract, unless expressly provided otherwise. Any indemnification provision inconsistent with A.R.S. § 34-226 is, in all cases, not void, but will be interpreted and applied as if it were consistent with A.R.S. § 34-226.

Upon request, CONSULTANT may fully indemnify and hold harmless any private property owner granting a right of entry to CONSULTANT for the purpose of completing the project.

ARTICLE 6 – COMPLIANCE WITH LAWS

CONSULTANT will comply with all applicable federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona govern the rights of the Parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract will be brought and maintained in Superior Court in Pima County. Any changes in the governing laws, rules, and regulations during the term of this Contract apply, but do not require an amendment.

ARTICLE 7 – STATUS OF CONSULTANT

The status of CONSULTANT is that of an independent contractor and CONSULTANT is not considered an employee of Pima County and is not entitled to receive any of the fringe benefits associated with regular employment, and will not be subject to the provisions of the merit system. CONSULTANT will be responsible for payment of all Federal, State and Local taxes associated with the compensation received by CONSULTANT from COUNTY. CONSULTANT will be responsible for program development and operation without supervision by COUNTY.

ARTICLE 8 – CONSULTANT'S PERFORMANCE

CONSULTANT will perform the work in accordance with the terms of the Contract and with the degree of care and skill required of any similarly situated Arizona registrant. CONSULTANT will employ suitably trained and skilled professional personnel to perform all required services under this Contract. Prior to changing any key personnel, especially those key personnel COUNTY relied upon in making this Contract, CONSULTANT will obtain the approval of COUNTY.

CONSULTANT is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all its effort and other services furnished by CONSULTANT under this Agreement. Without additional compensation, CONSULTANT will correct or revise any errors, omissions, or other deficiencies in all products of its efforts and other services provided. This includes resolving any deficiencies arising out of the acts or omissions of CONSULTANT found during or after the course of the services performed by or for CONSULTANT under this Agreement, regardless of COUNTY having knowledge of or condoning or accepting the products or the services. Correction of such deficiencies will be at no cost to COUNTY.

ARTICLE 9 – NON-WAIVER

The failure of COUNTY to insist in any one or more instances upon full and complete compliance with any of the terms and provisions of this Contract or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

ARTICLE 10 – SUBCONSULTANT

CONSULTANT will be fully responsible for all acts and omissions of its SUBCONSULTANT and of persons directly or indirectly employed by SUBCONSULTANT and of persons for whose acts any of them may be liable to the same extent that CONSULTANT is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract creates any obligation on the part of COUNTY to pay or see to the payment of any money due any SUBCONSULTANT, except as may be required by law.

ARTICLE 11 – NON-ASSIGNMENT

CONSULTANT will not assign its rights to this Contract in whole or in part, without prior written approval of COUNTY. COUNTY may withhold assignment at its sole discretion, provided that COUNTY will not unreasonably withhold such approval.

ARTICLE 12 – NON-DISCRIMINATION

CONSULTANT will comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this Contract as if set forth in full herein **including flow down of all provisions and requirements to any SUBCONSULTANTS**. During the performance of this Contract, CONSULTANT will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

ARTICLE 13 – AMERICANS WITH DISABILITIES ACT

CONSULTANT will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. If CONSULTANT is carrying out government programs or services on behalf of COUNTY, then CONSULTANT will maintain accessibility to the program to the same extent and degree that would be required of COUNTY under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Agreement.

ARTICLE 14 – CANCELLATION FOR CONFLICT OF INTEREST

This Contract is subject to the provisions of A.R.S. §38-511 which provides in pertinent part:

"The state, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract."

ARTICLE 15 – TERMINATION OF CONTRACT FOR DEFAULT

- A. Upon a failure by CONSULTANT to cure a default under this Contract within ten (10) days of receipt of notice from COUNTY of the default, COUNTY may, in its sole discretion, terminate this Contract for default by written notice to CONSULTANT. In this event, COUNTY may take over the work and complete it by Contract or otherwise. CONSULTANT and its sureties, if any, will be liable for any damage to COUNTY resulting from CONSULTANT'S default, including any increased costs incurred by COUNTY in completing the work.
- B. The occurrence of any of the following constitutes an event of default:
 - 1. Abandonment of or refusal or failure to prosecute the work or any separable part thereof with the diligence that will insure completion within the time specified in this Contract, including any extension, or a failure to complete the work (or the separable part of the work) within the specified time;
 - 2. Persistent or repeated refusal or failure to supply enough properly skilled workers or materials to perform the work on schedule;
 - 3. Failure to provide competent supervision at the site;

4. Failure to take down, rebuild, repair, alter or amend any defective or deficient work, or to remove any defective or deficient Material
 5. Failure to make prompt payment to SUBCONSULTANTS or suppliers for material or labor;
 6. Loss of CONSULTANT'S business or other required license or authority, or any curtailment or cessation for any reason of business or business operations that would substantially impair or preclude CONSULTANT'S performance of this Contract;
 7. Disregard of laws, ordinances, or the instructions of COUNTY or its representatives, or any otherwise substantial violation of any provision of the Contract; or
 8. If a voluntary or involuntary action for bankruptcy is commenced with respect to CONSULTANT, or CONSULTANT becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver or liquidator appointed in respect of its assets.
- C. In the event of a termination for default:
1. All finished and unfinished as-builts, shop drawings, documents, data, studies, surveys, drawings, photographs, reports and other information in whatever form, including electronic, acquired or prepared by CONSULTANT for this project become COUNTY'S property and will be delivered to COUNTY not later than five (5) business days after the effective date of the termination;
 2. COUNTY may withhold payments to CONSULTANT arising under this or any other Contract for the purpose of set-off until such time as the exact amount of damage due COUNTY from CONSULTANT is determined; and
 3. Subject to the immediately preceding subparagraph (2), COUNTY'S liability to CONSULTANT will not exceed the reasonable value of work satisfactorily performed prior to the date of termination for which payment has not been previously made.
- D. The Contract will not be terminated for default nor CONSULTANT charged with damages under this Article, if—
1. Excepting item (8) in paragraph B above, the event of default or delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of CONSULTANT. Examples of such causes include—
 - (i) Acts of God or of the public enemy,
 - (ii) Acts of the COUNTY in either its sovereign or contractual capacity,
 - (iii) Acts of another consultant in the performance of a Contract with the COUNTY,
 - (iv) Fires,
 - (v) Floods,
 - (vi) Epidemics,
 - (vii) Quarantine restrictions,
 - (viii) Strikes,
 - (ix) Freight embargoes,
 - (x) Unusually severe weather, or
 - (xi) Delays of SUBCONSULTANTS or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both CONSULTANT and the SUBCONSULTANTS or suppliers; and
 2. CONSULTANT, within three (3) days from the beginning of any event of default or delay (unless extended by COUNTY), notifies COUNTY in writing of the cause(s) therefor. In this circumstance, COUNTY will ascertain the facts and the extent of the resulting delay. If, in the judgment of COUNTY, the findings warrant such action, the time for completing the work may be extended.
- E. For the purposes of paragraph A above, "receipt of notice" includes receipt by hand by CONSULTANT'S onsite project manager, facsimile transmission, or under the Notices clause of this Contract.
- F. If, after termination of the Contract for default, it is determined that the CONSULTANT was not in default, or that the delay was excusable, the rights and obligations of the Parties will be the same as if the termination had been issued for the convenience of the COUNTY.
- G. The rights and remedies of COUNTY in this Article are cumulative and in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 16 – TERMINATION FOR CONVENIENCE OF COUNTY

COUNTY may terminate this Contract at any time by giving written notice to CONSULTANT of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials will, at the option of COUNTY, become its property. If COUNTY terminates the Contract as provided herein, COUNTY will pay CONSULTANT an amount based on the time and expenses incurred by CONSULTANT prior to the termination date. However, COUNTY will make no payment for anticipated profit on unperformed services.

ARTICLE 17 – NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision in this Contract, COUNTY may terminate this Contract if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, COUNTY has no further obligation to CONSULTANT, other than payment for services rendered prior to termination.

ARTICLE 18 – NOTICES

Any notice required or permitted to be given under this Contract will be in writing and will be served by delivery or by certified mail upon the other party as follows:

COUNTY:

Lisa Josker, Interim Director
Facilities Management
150 W. Congress, 3rd Floor
Tucson, AZ 85701
Tel: (520) 724-3104
Fax: (520) 724-3900

CONSULTANT:

Phillip Swaim, AIA, Principal
Swaim Associates, Ltd.
7350 E. Speedway Blvd. #210
Tucson, AZ 85710
Tel: (520) 326-3700
Fax: (520) 326-1148

ARTICLE 19 – OTHER DOCUMENTS

CONSULTANT and COUNTY in entering into this Contract have relied upon information provided in CONSULTANT'S response to a request for fee proposal. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract. CONSULTANT will perform services in accordance with the terms of the Contract and at a level of care consistent with prevailing industry standards. In the event any provision of this Contract is inconsistent with those of any other document, the Contract provisions will prevail.

ARTICLE 20 – REMEDIES

Either party may pursue any remedies provided by law for the breach of this Contract, provided, however, that the procedures in ARTICLE 24 are first exhausted. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

ARTICLE 21 – SEVERABILITY

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law is ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

ARTICLE 22 – BOOKS AND RECORDS

CONSULTANT will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY.

CONSULTANT will retain all records relating to this Contract at least five (5) years after its termination or cancellation or until any related pending proceeding or litigation has been closed, if later. Alternatively, CONSULTANT may, at its option, deliver such records to COUNTY for retention.

ARTICLE 23 – DELAYS

Neither party hereto is in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party.

ARTICLE 24 – DISPUTES

In the event of a dispute between COUNTY and CONSULTANT regarding any part of this Contract or the Parties' obligations or performance hereunder, either Party may request a special meeting between their respective representatives to resolve the dispute. If the dispute remains unresolved, then either Party may request escalation of the issue to a meeting between the Director of the Pima County Department administering this Contract and CONSULTANT'S counterpart official, such meeting to be held within one week of the request, unless otherwise agreed. If the dispute is still not resolved after that meeting, then either Party may pursue such remedy or remedies as may be available to them under the laws of the State of Arizona.

The Parties will continue performance of their respective obligations under this Contract notwithstanding the existence of any dispute.

ARTICLE 25 – OWNERSHIP OF DOCUMENTS

All original drawings, field data, estimates, field notes, plans, specifications, documents, reports, calculations, and other information developed by CONSULTANT under this Contract vest in and become the property of COUNTY and will be delivered to COUNTY upon completion or termination of the services, but CONSULTANT may retain and use copies thereof. COUNTY agrees that the material will not be used for any project other than the project for which it was designed without the express permission of CONSULTANT.

ARTICLE 26 – PUBLIC INFORMATION

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. §§ 34-603(H), 604(H), in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted by CONSULTANT in any way related to this Contract, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

Any information submitted related to this Contract that CONSULTANT believes constitutes proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL prior to submittal to COUNTY and be accompanied by an index specifically identifying and describing the general contents of each page so marked. The index is a public record and should not include any information considered confidential.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., COUNTY will release records marked CONFIDENTIAL ten (10) business days after the date of notice to CONSULTANT of the request for release, unless CONSULTANT has, within the ten (10) day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release is not counted in the time calculation. CONSULTANT will be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

COUNTY will not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor will COUNTY be in any way financially responsible for any costs associated with securing such an order.

ARTICLE 27 – LEGAL ARIZONA WORKERS ACT COMPLIANCE

CONSULTANT hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to CONSULTANT'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CONSULTANT will further ensure that each SUBCONSULTANT who performs any work for CONSULTANT under this Contract likewise complies with the State and Federal Immigration Laws.

COUNTY has the right at any time to inspect the books and records of CONSULTANT and any SUBCONSULTANT in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of CONSULTANT'S or any SUBCONSULTANT'S warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting CONSULTANT to penalties up to and including suspension or termination of this Contract. If the breach is by a SUBCONSULTANT, and the subcontract is suspended or terminated as a result, CONSULTANT will take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or to retain a replacement SUBCONSULTANT (subject to COUNTY approval if SBE or DBE preferences apply), as soon as possible so as not to delay project completion.

CONSULTANT will advise each SUBCONSULTANT of COUNTY'S rights, and the SUBCONSULTANT'S obligations, under this Article by including a provision in each subcontract substantially in the following form:

^a"SUBCONSULTANT hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to SUBCONSULTANT'S employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONSULTANT further agrees that COUNTY may inspect the SUBCONSULTANT'S books and records to insure that SUBCONSULTANT is in compliance with these requirements. Any breach of this paragraph by SUBCONSULTANT is a material breach of this contract subjecting SUBCONSULTANT to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article are the responsibility of CONSULTANT. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CONSULTANT'S approved construction or critical milestones schedule, such period of delay will be excusable delay for which CONSULTANT is entitled to an extension of time, but not costs.

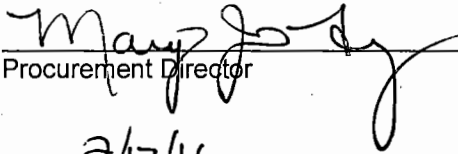
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ARTICLE 28 – ENTIRE AGREEMENT

This document constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written Amendment signed by the Parties.

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Contract on the dates written below.

APPROVED:

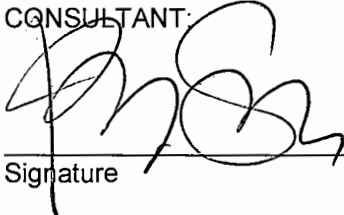


Procurement Director

2/17/16

Date

CONSULTANT:



Signature

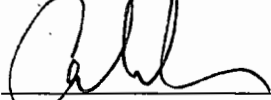
PAUL SHAM, PRESIDENT

Name and Title (Please Print)

2/12/16

Date

APPROVED AS TO FORM:



Deputy County Attorney

ANDREW FLAGG

Name (Please Print)

2/11/2016

Date

Exhibit 3

Pima County Contract with Barker Morrissey Contracting Inc.

PIMA COUNTY FACILITIES MANAGEMENT DEPARTMENT		CONTRACT	
PROJECT:	Construction Manager at Risk Services For Project Curvature (XPCWV1)	NO.	<u>CT-FM-16-241</u>
CONTRACTOR:	Barker Morrissey Contracting, Inc. 2127 E Speedway Blvd., #101 Tucson, AZ 85719	AMENDMENT NO.	_____
AMOUNT:	\$101,475.00	This number must appear on all invoices, correspondence and documents pertaining to this contract.	
FUNDING:	Certificates of Participation- 2016	(stamp here)	

CONSTRUCTION MANAGER AT RISK

THIS CONTRACT is entered into between Pima County, a body politic and corporate of the State of Arizona, hereafter called COUNTY, and Barker Morrissey Contracting, Inc., hereafter called "CMAR" or "CONTRACTOR", individually, and collectively described as a "Party" or the "Parties", respectively.

WITNESSETH

WHEREAS, COUNTY requires the services of a Construction Manager at Risk (CMAR) to perform Pre-construction Services and, upon mutual agreement of the Parties, Construction Services for the above-named Project (hereafter the Project); and

WHEREAS, COUNTY requires CMAR to participate as a member of the Project Team, consisting of CMAR, the selected Design Professional(s), and COUNTY during Preconstruction and other required phases of the Project; and

WHEREAS, CMAR has represented to COUNTY that CMAR has the requisite skill, expertise and resources to provide Construction Manager at Risk services and to construct the Project; and

WHEREAS, due to CMAR's past experience and knowledge specific to this project, it was determined under the emergency procurement provisions of A.R.S. §34-606 and Pima County Code 11.20.060 that a competitive procurement for this project would be contrary to the COUNTY's interests; and

WHEREAS, at its regularly scheduled meeting on January 19, 2016, the Board of Supervisors approved the award of the Contract to CMAR and approved the Procurement Director to sign this Contract as well as future amendments to the Contract; and

WHEREAS, COUNTY intends to negotiate with CMAR regarding general conditions, construction fees, and other elements of the Guaranteed Maximum Price (GMP) for construction.

NOW, THEREFORE, the Parties hereto agree to the following:

ARTICLE 1 – TERM

This Contract, as approved by the Board of Supervisors, commences on January 19, 2016 and terminates on February 28, 2017, unless sooner terminated or further extended for Project completion. COUNTY may, with written notice to CMAR, extend this Contract for such additional period or periods as may be required for Project completion.

ARTICLE 2 - SCOPE OF WORK

- A.** CMAR will perform all needed services in the Pre-construction and per amendment to this Contract, Construction Services Phases of the Project, and provide all material, equipment, tools, and labor necessary to satisfactorily complete all Work, deliverables and services described in and reasonably inferable from the Contract Documents (collectively "Scope of Work", "Project Work" or "the Work"), as more fully described in **Exhibit "A" Scope of Work (4 pages)**, to this Contract. This Contract covers only

Preconstruction Services and is not effective as a Contract for Construction Phase services until such time as the Parties agree on a Guaranteed Maximum Price (GMP), including CMAR's Construction Phase Fee, and incorporate those terms into this Contract by Amendment.

- B. COUNTY has retained CMAR to provide construction and costing expertise as part of the Project Team. The Project Team's goal is to deliver a quality Project, on schedule, at or below budget that meets COUNTY's needs. CMAR understands, therefore, that active participation and contribution of its expertise in Pre-construction is critical to the success of the Project and is the essence of this agreement for Preconstruction Services. In furtherance thereof, CMAR will take leadership in the development of the cost model and schedule for design and construction of the Project and commits to actively participate in design meetings and reviews and apply its best expertise and knowledge to identify and recommend alternatives to advance the Project. The use of terms like "constructability review" or "value engineering" to describe activities expected of CMAR is not meant to imply that CMAR will only provide after-the-fact design reviews. CMAR will actively contribute its expertise in advance of and during design on an ongoing basis and design will be accomplished collaboratively. The Parties desire to avoid a process of designing, reviewing, and redesigning the Project.
- C. CMAR will provide scheduling, budget and cost expertise as part of the Preconstruction team. CMAR's experts must be able to advise and render opinions to the team on a near real-time basis concerning impacts to the Project budget and schedule arising from proposed design alternatives or design options being explored during the design process. The Project Team will use this advice to help decide if proposed alternatives or options should be pursued. Nothing in this **Article 2** requires that CMAR provide design services.
- D. CMAR will develop detailed Project construction estimates, study labor conditions, research and provide advice regarding materials, alternatives, methods, means, constructability, and sequencing and otherwise contribute to the advancement and development of the Project throughout the Pre-construction phase. CMAR will update and refine the cost model as design progresses. CMAR will actively track estimated construction costs throughout Preconstruction Services Phase and will advise the team any time that the estimated construction costs approach or exceed COUNTY's budget for construction.
- E. At such time during the Preconstruction Services phase that COUNTY directs, CMAR will prepare a cost estimate and provide a GMP for construction of the Project (or for a segment of the Project, if construction is to be in phases) for COUNTY's review and approval. If the GMP proposed by the CMAR is acceptable to COUNTY, the Parties will execute an Amendment to this Contract to incorporate the GMP and supporting documents as may be necessary to define the scope of construction Work covered by the GMP. If the GMP is not within COUNTY's construction budget or the budget for the Project segment, if phased, COUNTY reserves the right to terminate this Contract or act as otherwise provided in **Article 2.3.7.3 of the General Conditions**. Acceptance by COUNTY of one or more phased GMPs does not obligate COUNTY to accept any succeeding GMP.
- F. The Construction Services Phase will begin upon acceptance and execution by COUNTY of CMAR's GMP, or the first GMP in the event of multiple GMPs. Construction will be accomplished in accordance with this Contract, including all Appendices and Exhibits, and the construction documents to be developed under this Contract. CMAR agrees to provide efficient business administration and superintendence, and exercise its best judgment and skill to complete the Project in the most expeditious and economical manner consistent with the best interests of COUNTY.
- G. Changes in the scope or fee for the Preconstruction Services Phase must be accomplished by an amendment to this Contract executed by the Parties. Preconstruction Services costing in excess of the agreed Preconstruction Services fee will be at CMAR's own expense.
- H. COUNTY has the option to request additional Project-related Preconstruction and/or Construction Services within the scope of this Contract.

ARTICLE 3 - PRECONSTRUCTION PHASE FEE AND GUARANTEED MAXIMUM PRICE

- A. COUNTY will pay CMAR a Preconstruction Services Phase Fee for Preconstruction Services. The CMAR's Construction Services Phase Fee, plus the cost of the Work (direct construction cost) plus a contingency, bonds, insurance and taxes (indirect construction costs) will comprise the GMP to be established in

compliance with **Exhibit "B" General Conditions**. Unless otherwise agreed, CMAR's GMP will include all required sales, use, franchise and other taxes in effect on the date of COUNTY approval of the GMP, as well as all applicable bond and insurance costs.

- B. The Preconstruction Services Phase Fee will not exceed One Hundred One Thousand Four Hundred Seventy Five dollars (\$101,475.00) as detailed in CMAR's preconstruction estimate incorporated herein as **Exhibit "B" Attachment 3 (1 page)**. The Construction Services Phase Fee will be a fixed fee, will be set forth in GMP described in **Article 2.E** above and, if approved by COUNTY, will be incorporated into this Contract by Amendment.
- C. If the GMP requires an adjustment due to changes in the Scope of Work during the Construction Services Phase, the cost of such changes will be priced under **Article 10 of the General Conditions**.
- D. For COUNTY-caused construction delays, either agreed to or awarded, CMAR will provide all the necessary extended general conditions for a daily sum as provided for in **Article 10.3 of the General Conditions**.

ARTICLE 4 - PROCEDURE FOR PAYMENT

- A. **Progress Payments:** For Preconstruction Services, CMAR will submit to COUNTY within one (1) week of the last business day of each month CMAR's application for payment based on the percentage completed for each Preconstruction design phase as agreed to by COUNTY. COUNTY will make payment for CMAR's Construction Services in accordance with **Article 7 of the General Conditions**. All construction costs which exceed the GMP and are not authorized by change order are to be paid by the CMAR and not COUNTY.
- B. **Record Keeping and Financial Controls.** With respect to all Work performed by CMAR, its subcontractors and consultants under this Contract, CMAR, its subcontractors and consultants will keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, and subject to approval by COUNTY. During performance of the Work and for five (5) years after final payment, CMAR will retain and will also require all subcontractors and any consultants to retain for review or audit by COUNTY all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matter related to the Work. Upon request by COUNTY, CMAR will produce a legible copy or the original of any or all such records at any time during or after the Work as COUNTY may request. CMAR will submit to COUNTY, upon request, all payrolls, reports, estimates, records and any other data concerning work performed or to be performed and concerning materials supplied or to be supplied, as well as subcontractor or consultant payment applications or invoices and such subcontractor's or consultant's progress payment checks. The requirements of this section must be provided for in all Contracts between CMAR and its subcontractors and consultants.
- C. **Audit.** For a period of five (5) years from Final Payment under this Contract, COUNTY reserves the right to audit and question any payment made under this Article and to require reimbursement therefor by setoff or otherwise for payments determined to be improper or contrary to the Contract or law.

ARTICLE 5 - CONTRACT TIME

- A. Time is of the essence with respect to the dates and times set forth in the Contract documents. CMAR understands that the time(s) for completion(s) set forth in these Documents are essential to the COUNTY and a material consideration for this Contract.
- B. The Work and Contract time commence within five (5) days of CMAR's receipt of COUNTY's notice to proceed (NTP) unless the Parties agree otherwise in writing.
- C. CMAR will achieve substantial completion of the entire Work (the substantial completion date) no later than November 15, 2016, subject to adjustments in accordance with the Contract Documents.
- D. CMAR will achieve interim milestones and substantial completion of identified portions or phases of the Work, subject to adjustments in accordance with the Contract Documents.

- E. Final Completion.** CMAR will achieve final completion of the entire Work or portion or phase thereof within sixty (60) calendar days after the date established for substantial completion of the entire Work or corresponding portion or phase thereof, unless otherwise agreed in writing.

ARTICLE 6 – INSURANCE

The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. COUNTY in no way warrants that the minimum limits contained herein are sufficient to protect the CMAR from liabilities that arise out of the performance of the work under this Contract. The CMAR is free to purchase additional insurance.

CMAR'S insurance will be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers will have an "A.M. Best" rating of not less than A-VII. COUNTY in no way warrants that the above-required minimum insurer rating is sufficient to protect the CMAR from potential insurer insolvency.

6.1 Minimum Scope and Limits of Insurance:

CMAR will procure and maintain, until all of their obligations have been discharged, coverage with limits of liability not less than those stated below.

- 6.1.1 Commercial General Liability (CGL) – Occurrence Form with limits of \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form Contractual liability coverage, and products – completed operations.
- 6.1.2 Business Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000.
- 6.1.3 Workers' Compensation and Employers' Liability - Statutory requirements and benefits. Coverage is compulsory for employers of one or more employees. Employer's Liability - \$500,000.

Note: The Workers' Compensation requirement will not apply to a CONTRACTOR that is exempt under A.R.S. § 23-901, and when such CMAR executes the appropriate COUNTY Sole Proprietor or Independent CMAR waiver form.

- 6.1.4 Builder's Risk Insurance ☒ does ☐ does not apply to this contract. If Builder's Risk Insurance applies to this contract, then the CONTRACTOR shall be required to maintain throughout the course of construction, Builder's Risk Insurance in a dollar amount equal to the full insurable value of the work under contract, which shall include "All Risk" coverage. Pima County shall be named as a "Loss Payee". CONTRACTOR shall be responsible for equipment, materials, and supplies until completion of the project and acceptance by Pima County. Flood and earthquake coverage does not need to be included in the Builder's Risk Insurance.

6.2 Additional Insurance Requirements:

The policies will include, or be endorsed to include, as required by this written agreement, the following provisions:

- 6.2.1 Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies will each be endorsed to include COUNTY, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the CMAR.
- 6.2.2 Subrogation Endorsement: The General Liability, Business Automobile Liability and Workers' Compensation Policies will each contain a waiver of subrogation endorsement in favor of COUNTY, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the CONTRACTOR.
- 6.2.3 Primary Insurance Endorsement: The CMAR'S policies will stipulate that the insurance afforded the CMAR will be primary and that any insurance carried by the Department, its agents, officials, employees or COUNTY will be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
- 6.2.4 Insurance provided by the CMAR will not limit the CMAR'S liability assumed under the indemnification provisions of this Contract.

6.3 Notice of Cancellation:

For each insurance policy required by the insurance provisions of this Contract, the CMAR must provide to COUNTY, within two (2) business days of receipt, a notice if a policy is suspended, voided, or cancelled for any reason. Such notice will be mailed, emailed, hand-delivered or sent by facsimile transmission to Pima County Procurement, 130 West Congress Street, 3rd Floor, Tucson, Arizona 85701-1317 or via fax to (520) 724-4434.

6.4 Verification of Coverage:

CMAR will furnish COUNTY with certificates of insurance (valid ACORD form or equivalent approved by COUNTY) as required by this Contract. An authorized representative of the insurer will sign the certificates.

6.4.1 All certificates and endorsements, as required by this written agreement, are to be received and approved by COUNTY before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of Contract.

6.4.2 All certificates required by this Contract will be sent directly to the Department. COUNTY Project or Contract number and Project description will be noted on the certificate of insurance. COUNTY reserves the right to require complete copies of all insurance policies required by this Contract at any time.

6.5 Approval and Modifications:

COUNTY Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this Contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

ARTICLE 7 - BONDS AND INSURANCE

CMAR will have and maintain the insurance coverage required by **Article 6 of the General Conditions** and will provide proof thereof to COUNTY before execution of the Contract for Preconstruction Services. CMAR must provide payment and performance bonds and proof of insurance specific to construction to COUNTY prior to COUNTY's approval of the GMP, or if there are multiple GMPs, to the GMP to which they pertain. All insurance and bonds must conform to **Article 6 of the General Conditions**.

ARTICLE 8 - TERMINATION FOR CONVENIENCE OR DEFAULT

COUNTY may terminate this Contract for convenience or default as provided in **Article 11 of the General Conditions**. If this Contract is terminated for default and said termination is determined to be improper or wrongful, in whole or in part, then the termination will be converted to a termination for convenience under **Article 11.3.8 of the General Conditions**, but only to the extent such termination is determined wrongful. In the event of a partial conversion to a termination for convenience, any sums due CMAR under the termination for convenience may be set off against amounts owed to COUNTY by CMAR as damages arising from the termination for default or otherwise.

ARTICLE 9 - INDEPENDENT CONTRACTOR

The status of CMAR is that of an independent Contractor. CMAR will perform its obligations under this Contract without supervision by COUNTY. Neither CMAR nor CMAR's officers, agents, employees, or subcontractors at any tier are employees of COUNTY or entitled to receive any employment-related fringe benefits under COUNTY's Merit System. CMAR is responsible for payment of all Federal, State and local taxes associated with payments received pursuant to this Contract, and will indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of CMAR's failure to pay such taxes.

ARTICLE 10 - ACCESS TO RECORDS

A. This Contract is open with respect to all price and cost information, including invoices, estimates, pay applications, subcontractor bids or quotes, and any and all other financial or monetary information or data relevant to this Contract, whether in hard copy or in electronic form. CMAR will keep and maintain proper

and complete books, records and accounts, which must be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY, including third-Parties designated by COUNTY. Failure of CMAR to keep or provide access to books or information is a material breach of this Contract.

- B. CMAR will retain all records relating to this Contract at least five (5) years after its termination or cancellation or, if later, until any related proceeding or litigation has been closed.
- C. CMAR's records for all Contracts, specifically including but not limited to lump sum Contracts (i.e. fixed price or stipulated sum Contracts), unit price, cost plus or time & material Contracts with or without a guaranteed maximum (or not-to-exceed amounts) will upon reasonable notice be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any COUNTY representative or any outside representative engaged by COUNTY for the purpose of examining such records. COUNTY or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of five (5) years after final payment or longer if required by law. COUNTY's representatives may (without limitation) conduct verifications such as counting employees at the construction site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with CMAR employees, field and agency labor, subcontractors, and vendors.
- D. CMAR'S records must include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, Contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers, memoranda, and any and all other agreements, sources of information and matters that may in COUNTY's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract document. Such records include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other of CMAR'S records which may have a bearing on matters of interest to COUNTY in connection with CMAR'S dealings with COUNTY (all of the foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:
 - 1. Compliance with Contract requirements for deliverables
 - 2. Compliance with approved plans and specifications
 - 3. Compliance with COUNTY's business ethics expectations
 - a. Compliance with Contract provisions regarding the pricing of change orders
 - b. Accuracy of CMAR representations regarding the pricing of invoices
 - c. Accuracy of CMAR representations related to claims submitted by the CMAR or any of its payees.
- C. CMAR will require all payees (examples of payees include but are not limited to subcontractors, material suppliers, insurance carriers) to comply with the provisions of this Article by including the requirements hereof in a written Contract agreement between CMAR and payee. CMAR will ensure that all payees (including those entering into lump sum Contracts) have the same right to audit provisions contained in this Contract.
- D. COUNTY's authorized representative(s) will have reasonable access to the CMAR'S facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract and will be provided adequate and appropriate work space in order to conduct audits in compliance with this Article.
- E. If an audit inspection or examination in accordance with this Article discloses overpricing or overcharges to COUNTY (of any nature) by the CMAR and/or the CMAR'S subcontractors in excess of one hundred thousand dollars (\$100,000.00), in addition to making adjustments for the overcharges, CMAR will reimburse the reasonable actual cost of COUNTY's audit to COUNTY. Any adjustments or payments which must be made as a result of any such audit or inspection of the CMAR'S invoices and/or records will be made within a reasonable amount of time not to exceed ninety (90) days from presentation of COUNTY's findings to CMAR.
- F. In addition to the normal paperwork documentation the CMAR typically furnishes to COUNTY, in order to

facilitate efficient use of COUNTY resources when reviewing and/or auditing the CMAR'S billings and related reimbursable cost records, the CMAR agrees to furnish (upon request) the following types of information in the specified computer (PC) readable file format(s):

Type of Record	PC Readable File Format
Monthly Job Cost Detail	.pdf and Excel
Detailed job Cost History To Date	.pdf and Excel
Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)	.pdf and Excel
Total Job to date Labor Distrubution detail (if not already included in the detailed Job Cost History to date)	.pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	.pdf
Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	.pdf
Daily Superintendent Reports	.pdf
Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to subcontractors, etc.	.pdf and Excel
Copies of Executed Subcontracts with all Subcontractors	.pdf
Copies of all executed change orders issued to Subcontractors	.pdf
Copies of all documentation supporting all reimbursable job costs (subcontractor payment applications, vendor invoices, internal cost charges, etc.)	.pdf

ARTICLE 11 – CMAR'S PERFORMANCE

CMAR will employ suitably trained and skilled personnel to perform all required services under this Contract. Prior to changing any key personnel, especially those key personnel COUNTY relied upon in making this Contract, CMAR will obtain the written approval of COUNTY. For the purposes of this Article, the key personnel are those personnel whose resumes were included in CMAR's statement of qualifications referenced in the recitals to this Contract or otherwise agreed to during Contract negotiations and referenced in the CMAR's approved Project organization chart, incorporated herein by reference.

CMAR's performance of its Preconstruction Services obligations and CMAR's active participation in the design process are critical to the success of the Project and are the essence of this Contract for Preconstruction Services. Repeated failure by CMAR to carry out these responsibilities, without excuse for reasons outside the control of CMAR, is a ground for termination for default under **Article 11 of the General Conditions**. CMAR's performance of Preconstruction Services will be an important consideration in the determination whether to proceed to the Construction Services Phase with CMAR and will be a factor for consideration in future procurements.

CMAR is responsible for the quality, technical accuracy, timely completion, and coordination of all its efforts and other services furnished by CMAR under this Contract. Without additional compensation, CMAR will correct or revise any errors, omissions, or other deficiencies in all products of its efforts and other services provided. This includes resolving any deficiencies arising out of the willful or negligent acts or omissions of CMAR found during or after the course of the services performed by or for CMAR under this Contract, to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CMAR in Arizona would exercise under similar conditions. CMAR's responsibility for these corrections or revisions exists regardless of COUNTY having knowledge of or condoning or accepting the products or the services. Any such resolution of deficiencies will be at no cost to COUNTY.

Correction of errors and omissions discovered on architectural or engineering plans and specifications are the responsibility of the Design Professional.

ARTICLE 12 - SUBCONTRACTORS

CMAR is fully responsible for all acts and omissions of its subcontractor(s) at every tier and of persons directly or indirectly employed by subcontractors at any tier and of persons for whose acts any of them may be liable to the same extent that CMAR is responsible for the acts and omissions of persons directly employed by CMAR. Nothing in this Contract creates any obligation on the part of COUNTY to pay or see to the payment of any money due any subcontractor, except as may be required by law.

CMAR will ensure that all subcontractors have the appropriate and current license issued by the Arizona Registrar of Contractors for Work they perform under this Contract. CMAR will not permit any subcontractor to perform Work that does not fall within the scope of the subcontractor's license, except as may be permitted under the Rules of the Registrar of Contractors.

For the purposes of this Article, "subcontractor" includes consultants to CMAR.

CMAR will not subcontract Work at any tier to any Contractor, firm, consultant, individual or other entity named in the federal System for Award Management (<https://www.sam.gov>) with an open exclusion.

CMAR will select subcontractors in accordance with A.R.S. 34-603.C.2.(e)(i) and CMAR's Subcontractor Selection Plan, incorporated and attached hereto as **Exhibit "B" ATTACHMENT 2 (2 PAGES)**.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS AND MODELS

- A. COUNTY, through its separate agreement with the design professional (DP), has and shall continue to have, ownership of all drawings, specifications, and other documents and electronic data furnished by DP.
- B. All original drawings, field data, estimates, field notes, plans, specifications, documents, reports, calculations, and other information developed by CMAR under this Contract vest in and become the property of COUNTY and will be delivered to COUNTY upon completion or termination of the services, but CMAR may retain and use copies thereof. COUNTY will not use the materials for any Project other than the Project for which it was prepared without the express permission of CMAR.
- C. In the event CMAR develops or generates a building information model (or equivalent) of the Project, CMAR will provide one electronic copy of the final model on permanent media to COUNTY. CMAR's delivery of the model to COUNTY shall constitute a grant to COUNTY of an irrevocable, paid-up, nonexclusive license to copy, use, display, disclose, or modify the model for any reasonable purpose for this Project. CMAR agrees that the rights granted to COUNTY include the ability to provide a copy of the model to any subsequent Contractor retained to maintain, modify or expand the Project in any way. COUNTY agrees that, as between COUNTY and CMAR only, any modifications to the model by or for COUNTY after final completion and acceptance of this Project is at COUNTY's sole risk and responsibility unless CMAR performs such modifications.

ARTICLE 14 - DISPUTE RESOLUTION

- A. At the initial Project meeting, the Parties will develop and establish an escalation procedure to be followed in the event of a failure to resolve an issue or disagreement at the field level. If disputes or disagreements arise, CMAR and COUNTY commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- B. The Parties will communicate regularly and work cooperatively to avoid or minimize disagreements or disputes. In the event disagreements or disputes occur, the Parties will work cooperatively at the field level to resolve the issues. CMAR and COUNTY will first attempt to resolve disputes or disagreements through discussions between CMAR's Representative and COUNTY's Representative.

If the Parties are not successful in reaching resolution at the field level, then the Parties will pursue resolution through escalation. If the Parties remain in disagreement, they will follow the procedures in paragraph D. below.

- C. Unless otherwise agreed in writing, CMAR will carry on the Work and maintain its progress during the course of any unresolved claims and controversy proceedings, and COUNTY will continue to make payments as they fall due to CMAR in accordance with the Contract Documents.
- D. In the event of a dispute between COUNTY and CMAR regarding any part of this Contract or the Contract Documents, or the Parties' obligations or performance hereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties will continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.
 - 1. Mediation. If the Parties are unable to resolve the dispute through the special meeting and/or escalation, then upon written notice of either Party of the desire to pursue resolution through mediation, a mediator, mutually acceptable to the Parties and experienced in design and construction matters, will be appointed. The Parties will share the cost of the mediator. The mediator will be given any written statements of the Parties and may review the Project site and any relevant documents. The mediator will call a meeting of the Parties within ten (10) days after appointment, which meeting will be attended by COUNTY's Project manager, CMAR's Project manager, and any other person who may be affected in any material respect by the resolution of such dispute. Such representatives will attempt in good faith to resolve the dispute. During such ten (10) day period, the mediator may meet with the Parties separately.
 - 2. Mediation Minutes. No minutes will be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, are non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process will be completed within twenty (20) working days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.
 - 3. Arbitration. If a dispute involving one million dollars (\$1,000,000.00) or less is not resolved pursuant to the procedures set forth in paragraphs 1. and 2. above, then the Parties will submit the matter to binding arbitration in accordance with the following:
 - a. Jurisdiction. As permitted by A.R.S. § 12-1518, claims, disputes and other matters in question hereunder which cannot be resolved pursuant to the procedures set forth in paragraphs 1 and 2 above are subject to arbitration as set forth below; provided, however, that the arbitrators have no power to change any of the provisions of this Contract in any respect nor have they any power to make an award of reformation, and the jurisdiction of the arbitrators is hereby expressly limited accordingly.
 - b. Request. Either Party may serve the other with a written request for arbitration, which notice will also specify the name and address of one (1) person designated to act as arbitrator on behalf of that Party. Within fifteen (15) days after the service of such request, the other Party will give to the first Party written notice specifying the name and address of the person designated to act as arbitrator on its behalf. If the other Party fails to so notify the first Party within the time above specified, then the appointment of the second arbitrator will be made by the American Arbitration Association pursuant to the rules then in effect. The arbitrators chosen will meet within ten (10) days after the second arbitrator is appointed and will appoint a third arbitrator who is a competent, impartial person, and in the event of their being unable to agree upon such appointment within the foregoing 10-day period, the third arbitrator will be selected by the Parties themselves if they can agree thereon within a further period of fifteen (15) days. If the Parties do not so agree, then either Party on behalf of both may request the American Arbitration Association to appoint the third arbitrator.
 - c. Rules. The arbitration will be conducted in Pima County, Arizona, and in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Any decision rendered will be based upon Arizona law.

- d. Decision. The arbitrators will render their decision, upon the concurrence of at least two (2) of their number, within thirty (30) days after the appointment of the third arbitrator. Their decision will be in writing and counterpart copies delivered to each Party. A decision in which any two (2) of the arbitrators acting hereunder concur may be appealed directly to the Superior Court of Pima County within thirty (30) days of the date of the decision. Unless so appealed, such decision is all cases final, binding and conclusive upon the Parties and judgment upon the decision may be entered by any court having jurisdiction thereof.
 - e. Fees. Unless otherwise required by the decision of the arbitrators, each Party will pay the fees and expenses of the original arbitrator appointed by such Party or in whose stead, as above provided, such arbitrator was appointed, and the fees of the third arbitrator, if any, will be borne equally by the Parties. Each Party will bear the expense of its own counsel, experts, and preparation and presentation of proof, in connection with all proceedings prior to the entry of a decision by the arbitrators.
4. Litigation. If a dispute involving more than one million dollars (\$1,000,000.00) is not resolved pursuant to the procedures set forth in **1. through 3. above**, then the dispute may be submitted to the appropriate State court of jurisdiction within Pima County or the Parties may submit the matter to Binding Arbitration pursuant to **Sections 3. a. through e. above** if both Parties agree to submit the dispute to the Binding Arbitration process.

ARTICLE 15 – GOVERNING LAW AND REMEDIES

Interpretation of the Contract Documents and any and all disputes arising under or in connection with the Project, Work and Contract Documents are governed by Arizona law. No suit or action may be commenced hereunder by any claimant other than in the Arizona Superior Court in Pima County, and only after all Contractual procedures have been exhausted.

Either Party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

CONSEQUENTIAL DAMAGES: EXCEPT AS OTHERWISE PROVIDED FOR HEREIN, NEITHER THE COUNTY NOR CMAR IS LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES ARISING OUT OF BREACH OF CONTRACT, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS.

ARTICLE 16 – NONAVAILABILITY OF FUNDS

Notwithstanding any other provision in this Contract, this Contract may be terminated if, for any reason, there are not sufficient appropriated and available monies for the purpose of maintaining COUNTY or other public entity obligations under this Contract. In the event of such termination, COUNTY has no further obligation to CMAR, other than to pay for services rendered prior to termination.

If funding for this Project is dependent on the sale of revenue bonds or other debt instruments and if bonds or other instruments are not sold or proceeds are not available for this Project, Pima County's obligations under this Contract may be canceled by the Pima County Board of Supervisors. If such a cancellation should be necessary, COUNTY will reimburse CMAR for all services rendered and non-cancelable commitments made prior to the cancellation in the manner set forth in **Article 11 of the General Conditions**.

ARTICLE 17 – ASSIGNMENT

Neither CMAR nor COUNTY may, without the written consent of the other, assign, transfer, or sublet any portion or part of the Work or the obligations required by a Party under the Contract Documents.

ARTICLE 18 - NON-DISCRIMINATION

CMAR agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 which is hereby incorporated into this Contract as if set forth in full herein including flow down of all provisions and

requirements to any subcontractors. During the performance of this Contract, CMAR will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

ARTICLE 19 - AMERICANS WITH DISABILITIES ACT

CMAR will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. If CMAR is carrying out government programs or services on behalf of COUNTY, then CMAR will maintain accessibility to the program to the same extent and degree that would be required of the COUNTY under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Contract.

ARTICLE 20 - BUSINESS ETHICS

A. Conflict of Interest: This Contract is subject to the provisions of A.R.S. 38-511 which provides in pertinent part:

"The state, its political subdivisions or any department of either may, within three years after its execution, cancel any Contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time, while the Contract or any extension of the Contract is in effect, an employee or agent of any other Party to the Contract in any capacity or a consultant to any other Party to the Contract with respect to the subject matter of the Contract."

B. Ethics: During the course of pursuing Contracts with COUNTY and while performing Contract Work in accordance with this Contract, CMAR agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the COUNTY's best interests.

- 1) CMAR will take reasonable steps to prevent any actions or conditions which could result in a conflict with COUNTY's best interests. These obligations apply to the activities of CMAR employees, agents, subcontractors, subcontractor employees and consultants to CMAR.
- 2) CMAR employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to COUNTY's representatives, employees or their relatives.
- 3) CMAR employees, agents or subcontractors (or their relatives) should not receive any payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the Project.
- 4) CMAR will notify a designated COUNTY representative within forty-eight (48) hours of any instance where the CMAR becomes aware of a failure to comply or possible failure to comply with the provisions of this Article.
- 5) Upon request by COUNTY, CMAR agrees to provide a certified Management Representation Letter executed by selected CMAR representatives in a form agreeable to COUNTY stating that they are not aware of any situations violating the business ethics expectations outlined in this Contract or any similar potential conflict of interest situations.
- 6) CMAR will include this clause in all Contracts with subcontractors and material suppliers receiving more than twenty-five thousand dollars (\$25,000.00) in funds in connection with COUNTY's Project.
- 7) CMAR will permit interviews of employees, reviews and audits of accounting or other records by COUNTY representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of CMAR's employees, agents, representatives, vendors, subcontractors, and other third Parties paid by CMAR in their relations with COUNTY's current or former employees or employee relatives.

- 8) CMAR will implement a program requiring its employees to sign acknowledgements that they have read and understand COUNTY's Business Ethics Expectations and the related obligations outlined in this Contract.

ARTICLE 21- AUTHORITY TO CONTRACT

CMAR warrants its right and power to enter into this Contract. If any Court or administrative agency determines that COUNTY does not have authority to enter into this Contract, COUNTY will not be liable to CMAR or any third Party by reason of such determination or by any reason of this Contract.

ARTICLE 22 - NON-WAIVER

The failure of either COUNTY or CMAR to insist in any one or more instance upon the full and complete compliance of any of the terms and provisions of this Contract or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either Party of sums less than may be due and owing it at any time is not an accord and satisfaction.

ARTICLE 23 – NOTICES

Any notice required or permitted to be given under this Contract will be in writing and served by personal delivery or by certified mail upon the other Party as follows:

COUNTY:

Lisa Josker, Interim Director
Facilities Management
150 W. Congress, 3rd Floor
Tucson, AZ 85701
Tel: (520) 724-3104
Fax: (520) 724-3900

CONSULTANT:

Brian Barker, President
Barker Morrissey Contracting, Inc.
2127 E. Speedway Blvd., #101
Tucson, AZ 85719
Tel: (520) 512-5698
Fax: (520) 323-3834

ARTICLE 24 - CONTRACT DOCUMENTS

- A. This Contract is structured as a series of interrelated documents comprised of this Contract, associated appendixes, exhibits, and additional documents incorporated by reference.
- B. The "Contract Documents" are comprised of the following in order of precedence:
1. This Contract, including exhibits, as it may be modified from time to time by the Parties.
 2. Supplementary Conditions, if any, that modify the General Conditions.
 3. Exhibit B General Conditions.
 4. Special Conditions, if any, providing Project-specific conditions and requirements.
 5. The complete design as accepted by the COUNTY, including drawings, specifications, and COUNTY-approved design documents.
 6. COUNTY's Project Criteria developed by COUNTY and Design Professional (if any).
 7. Standard Specifications and similar type documents incorporated by reference.
 8. COUNTY's Request for Qualifications (RFQ) with all Addenda, Exhibits and CMAR's Statement of Qualifications in response to the RFQ.
- B. In the event of conflict between or among successive addenda, amendments, change orders, or modifications thereto, the later govern over the earlier in time, but only to the extent of any conflict.
- C. The Contract Documents, including all Appendixes, Exhibits, attachments, amendments, change orders, and documents incorporated by reference are complementary and should be interpreted in harmony so as to avoid conflict or ambiguity. Terms, words and phrases used in the Contract Documents have the meanings defined in the **General Conditions** or, if not specifically defined, their ordinary and common meaning interpreted in a manner consistent with construction and design industry standards and practice. The objective of the Contract Documents is to provide a Contractual framework and define the relationship between the Parties within which the Parties may complete the Project on time and within the budget for construction.

- D. In the event of any conflict between this Contract and any other document, the Contract governs, and in the event of a conflict between any Appendix or Exhibit and any other document, the order of precedence is as listed in B above.

ARTICLE 25 -- MISCELLANEOUS

- A. **SUCCESSORSHIP.** The provisions of this Contract, including the other Contract Documents, are binding upon the Parties, their employees, agents, heirs, successors and assigns.
- B. **HEADINGS.** Headings used in the Contract Documents are for ease of reference only and will not in any way be construed to limit or alter the meaning of any provision.
- C. **SEXUAL HARASSMENT.** The CMAR will comply with COUNTY's current policy regarding sexual harassment. COUNTY prohibits sexual harassment by any person on COUNTY's premises or at any COUNTY-affiliated functions or facilities.
- D. **MODIFICATIONS.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both Parties.

ARTICLE 26-- PUBLIC INFORMATION

Pursuant to A.R.S. § 39-121 et seq., and A.R.S. §§ 34-603(H), 604(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all information submitted in response to this solicitation that underlies this Contract, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

Any records submitted in response to the solicitation that underlies this Contract that CMAR believes constitute proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL by CMAR prior to the close of the solicitation.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., County shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to CMAR of the request for release, unless CMAR has, within the ten day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release shall not be counted in the time calculation. CMAR shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

County is not, under any circumstances, responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor is County in any way financially responsible for any costs associated with securing such an order.

ARTICLE 27 -- LEGAL ARIZONA WORKERS ACT COMPLIANCE

CMAR hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to CMAR'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CMAR will further ensure that each subcontractor who performs any work for CMAR under this Contract likewise complies with the State and Federal Immigration Laws.

COUNTY has the right at any time to inspect the books and records of CMAR and any subcontractor in order to verify such Party's compliance with the State and Federal Immigration Laws.

Any breach of CMAR'S or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting CMAR to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, CMAR will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a

replacement subcontractor, (subject to COUNTY approval if SBE or MWBE preferences apply) as soon as possible so as not to delay Project completion.

CMAR will advise each subcontractor of COUNTY'S rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to SUBCONTRACTOR'S employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that COUNTY may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR is a material breach of this Contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this Contract."

Any additional costs attributable directly or indirectly to remedial action under this Article are the responsibility of CMAR. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of CMAR's approved construction or critical milestones schedule, such period of delay is excusable delay for which CMAR is entitled to an extension of time, but not costs.

ARTICLE 28 - SEVERABILITY


If any provision or any part of a provision of the Contract Documents is finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination will not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which will remain in full force and effect as if the unenforceable provision or part were deleted.

ARTICLE 29 - ENTIRE AGREEMENT

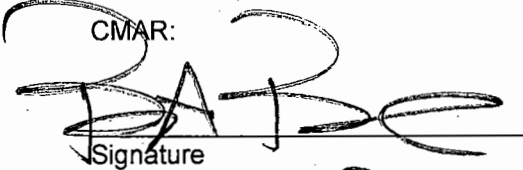
This Contract constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior contemporaneous agreements and understandings are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written amendment signed by the Parties.

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Contract on the dates written below.

APPROVED:


Procurement Director
2/17/16
Date

CMAR:


Signature
Brian A. Barker
Name and Title (Please Print)
2/16/16
Date

APPROVED AS TO FORM:


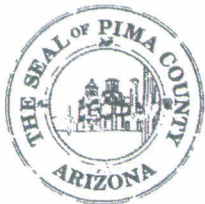

Deputy County Attorney
ANDREW FLAGG
Name (Please Print)
2/11/2016
Date

Exhibit 4

January 19, 2016 Board of Supervisors Memorandum



Board of Supervisors Memorandum

January 19, 2016

World View Enterprises, Inc. Corporate Headquarters in the County Aerospace, Defense and Technology Research and Business Park

Introduction

For the last six months, Pima County and Sun Corridor Inc. have been working to retain a technology company in Pima County. The codename for the company has been "Project Curvature." The County, City of Tucson, Sun Corridor Inc., and the Arizona Commerce Authority have all cooperated to provide Project Curvature certain economic development benefits to expand their facilities in Pima County (Attachment 1). The company name is World View Enterprises, Inc. The entrepreneurs that established World View previously launched another successful space research company in Pima County known as Paragon Space Development Corporation.

Pima County and the State of Arizona competed with the Florida Space Coast, as well as the State of New Mexico's Space Port America near White Sands. In the Florida case, Enterprise Florida assembled a package that included building and equipment financing, attractive lease rates, tax refunds and property tax abatements. New Mexico offered similar incentives and also included a substantial expenditure from their "deal closing" funds. Both locations had existing space ports with little need by the company or the jurisdiction to build additional resources or infrastructure.

There were advantages for World View to remain in southern Arizona and avoid moving costs, but the gap between the offer assembled by Sun Corridor Inc. and the economic development organizations in Florida and New Mexico was still in the \$15 to \$20 million range. For World View to retain their small but steadily growing operation in Tucson, the State and local governments needed to provide additional resources and incentives to keep the company from relocating.

We were notified on December 23, 2015 that World View had accepted the County's incentive proposal, as well as those of the Arizona Commerce Authority and the City of Tucson (Attachment 2). World View's acceptance of Pima County's proposal was contingent upon the County making its best efforts to deliver the manufacturing site by November 2016.

World View – A Space Technology Corporation

World View is a Tucson-based company pioneering the development of suborbital space flight, utilizing proprietary high-altitude balloon technology with parafoil controlled recovery

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to launch and recover from the same geographic area. This makes research, scientific and ultimately tourism flights more affordable, as well as minimizes risk to sensitive research equipment that exists with rocket-powered space flight and recovery.

World View has recently successfully negotiated multimillion dollar contracts with the National Aeronautics and Space Administration (NASA) and Northrop Grumman. World View anticipates significant additional demand based on commercial application of their suborbital space technology for tactical communications and surveillance. In addition, untapped potential exists with regard to space tourism.

The World View senior management team consists of Jane Poynter, Chief Executive Officer and Taber MacCallum, Chief Technology Officer; both founders of Tucson based Paragon Space Development Corporation and members of the first crew to live in Biosphere 2 for two years. Chief Scientist is Dr. Alan Stern, former NASA Associate Administrator for Science, and the Director of Flight Crew Operations is Astronaut Mark Kelly. Their advisory team includes many of the world's leading experts on nearspace science and balloon technology.

World View appears to have a business competitive space advantage to attract additional commercial clients, as well as aerospace and research institutions as the company has demonstrated the ability to a) provide suborbital, orbital, or a stationary instrument platform; b) maintain a sustained presence with continuous observation while far above controlled airspace; c) deploy quickly with flexible launch locations; and d) minimize deployment costs and recover the payload.

They will also have an advantage in space tourism because of a) non-traumatic launch to the edge of space in a unique eight-person sealed capsule; b) no significant health requirements or special suits; c) less expensive, safer, and gentler alternative; d) the ability to spend hours aloft; and e) gentle, controlled descent.

World View Job Growth Schedule

World View has selected Tucson and Pima County as their world corporate headquarters, and their primary employment base will reside within Pima County. Based on scheduled deliverable contract obligations, World View employment will grow substantially in the next five years. World View is expected to grow from over 25 employees to over 400 employees within the next five years and will pay on average \$55,000 per year, or 150 percent of the current annual wage in Pima County. These jobs are export-based jobs that have been our priority for job growth as designated in the County adopted Economic Development Plan for 2015 through 2017.

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Economic and Revenue Impacts of the Project

Pima County, through its partnership with Sun Corridor Inc., requested an independent, third-party analysis of the economic and revenue impacts of World View's proposed operation. The analysis, conducted by Phoenix-based Applied Economics, estimated the total economic impact of World View's operations at approximately \$3.5 billion over the next 20 years.

Including the previously noted 400-plus direct jobs created by World View, the company's operations would directly and indirectly support a total of 840 jobs created in Pima County and generate an estimated \$38.7 million in annual personal income in our region. The 400-plus direct jobs expected to be employed by World View in 2020 would result in an annual payroll of in excess of \$25.3 million; and the additional 400 indirect jobs created in Pima County businesses would support an estimated \$13.5 million in payroll during that same time period. Construction of the new facility is expected to create 100 new direct construction jobs and 50 indirect jobs in Pima County and generate an estimated \$13.5 million in new construction activity. This would result in a one-time economic impact to our region of an estimated \$19.5 million.

In addition to its important stimulus of the local economy, World View's operations would also provide significant tax revenues to local governments during the 20-year period analyzed by Applied Economics. The direct and indirect revenue impacts to Pima County alone are estimated at \$10.7 million, with additional revenue for the City of Tucson, Regional Transportation Authority, Pima Community College and Sunnyside Unified School District.

Applied Economics' analysis concluded that World View's operation would provide significant economic development benefits for Pima County and create a large number of high paying jobs for our region. The complete economic and revenue analysis is Attachment 3 to this memorandum.

World View Headquarters Site Selection

As stated previously, Pima County has been working with World View for over six months on a proposal to retain them within the region. We have worked very closely with their Real Estate Representative, PICOR, to find a site that would be acceptable to World View. Of all the various sites reviewed, World View has chosen a location within the County's planned Aerospace, Defense and Technology Business and Research Park. The property

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selected consists of 28 acres adjacent to the newly constructed Aerospace Parkway and south of Raytheon's new main south entry. The County has coordinated closely with Raytheon to ensure a new user such as World View is compatible with their operations. They have wholeheartedly endorsed the location of World View at the selected site. World View has had multiple discussions with the Air Traffic Control branch of the Federal Aviation Administration regarding the suitability of this site for launch operations.

The World View business model is consistent with our tenant goals for the Aerospace, Defense and Technology Business and Research Park. Their international clientele and involvement with a wide range of aerospace companies and the potential to attract suppliers make them a good initial tenant for the Park. World View also stands to be a major contributor to regional tourism with their international investors and client base and will be a high-profile tenant positioned along the Aerospace Parkway. Our property location very near Tucson International Airport is also beneficial for their client and investor base and is expected to contribute to Tucson Airport Authority and Fixed Base Operator revenues.

Facility Improvements Necessary to Retain World View in Pima County

As part of the County offer and incentive for World View, the County has proposed to construct a 120,000 square foot standard steel frame facility to accommodate light manufacturing operations on approximately 12 acres. The facility will include a 15,000 square foot mezzanine within the overall structure for office and support operations, for a total of 135,000 square feet of leasable space. The worksite will include parking and storage, as well as a 700-foot diameter launch pad. The total cost of the new facility – including all permitting fees, fees to be paid to the City of Tucson for transportation impact, payment for fixtures, furniture, equipment that are affixed to the structure – as well as facility construction, is estimated to be \$15 million and will be limited to no more than \$15 million – \$14.5 million for the manufacturing and administrative building and \$500,000 for the space port.

In our proposal, the County will finance this facility to be repaid by World View through annual lease and/or rent payments. The Lease/Purchase Agreement and legal description are Attachment 4 to this memorandum. Annual lease and/or rent payments are identified in Table 1 below and are compared with the County financing of the capital facilities, which will be through a 15-year Certificate of Participation financing agreement. The lease payments from World View will be over a 20-year period, with an option to purchase.

Table 1: Building Financing and Lease Payments.

Year	Paid by Pima County (at the end of the year)		Lease Rate per square foot	Paid by World View	Excess (Deficit) of Amounts Paid by World View to Amounts Paid by Pima County	
	Principal	Interest		Lease Payment	Period Deficit	Cumulative Deficit
1	\$ 749,116.51	\$ 600,000.00	\$ 5.00	\$ 675,000	(\$674,116.51)	(\$674,116.51)
2	779,081.17	570,035.34	5.00	675,000	(674,116.51)	(1,348,233.01)
3	810,244.41	538,872.09	5.00	675,000	(674,116.51)	(2,022,349.52)
4	842,654.19	506,462.32	5.00	675,000	(674,116.51)	(2,696,466.02)
5	876,360.36	472,756.15	5.00	675,000	(674,116.51)	(3,370,582.53)
6	911,414.77	437,701.73	8.00	1,080,000	(269,116.51)	(3,639,699.03)
7	947,871.36	401,245.14	8.00	1,080,000	(269,116.51)	(3,908,815.54)
8	985,786.22	363,330.29	8.00	1,080,000	(269,116.51)	(4,177,932.04)
9	1,025,217.66	323,898.84	8.00	1,080,000	(269,116.51)	(4,447,048.55)
10	1,066,226.37	282,890.13	8.00	1,080,000	(269,116.51)	(4,716,165.06)
11	1,108,875.43	240,241.08	10.00	1,350,000	883.49	(4,715,281.56)
12	1,153,230.44	195,886.06	10.00	1,350,000	883.49	(4,714,398.07)
13	1,199,359.66	149,756.84	10.00	1,350,000	883.49	(4,713,514.57)
14	1,247,334.05	101,782.46	10.00	1,350,000	883.49	(4,712,631.08)
15	1,297,227.41	51,889.10	10.00	1,350,000	883.49	(4,711,747.58)
16			12.00	1,620,000	1,620,000.00	(3,091,747.58)
17			12.00	1,620,000	1,620,000.00	(1,471,747.58)
18			12.00	1,620,000	1,620,000.00	148,252.42
19			12.00	1,620,000	1,620,000.00	1,768,252.42
20			12.00	1,620,000	1,620,000.00	3,388,252.42
	\$15,000,000.00	\$5,236,747.58		\$23,625,000	\$3,388,252.42	

The financing and rent is based on an assumed financing interest rate of four percent. By cursory examination of Table 1 above, the County is front-ending the capitalization of the building and facilities and fully recovering our investment, with an excess payment of nearly \$3.4 million over a 20-year lease period. The option to purchase between Years 10 and 17 will include a requirement that should World View opt to purchase the building, the accumulated deficit in our advancement of principal and interest payments must be fully repaid with interest over the period we have incurred a deficit at the stated long-term government investment pool rate. This is the interest rate the County would have received

on all funds, such as the fund balance or other funds reserved for purposes other than annual expenditure. In essence, the County is being made financially whole regardless of the option selected by World View; an early lease purchase or a full-term 20-year lease. Included in the \$15 million is not only the capital construction to build the facility, but all fees paid to the City and the County. Notable conceptual fee payments from this \$15 million are shown in Table 2 below. These estimates are relatively accurate but may vary.

Table 2: World View Headquarters Fee Payments.

Description	Amount
Wastewater Connection Fees	\$ 27,030
Water Connection Fee	10,600
Building/Site Development Permit Fees	446,000
Southland Impact Fees	566,370
Total	\$1,050,000

The building/site development permit fees will be paid to the County's Development Services Department. The Southland Impact Fees will be paid to the City of Tucson. The City Manager has committed these fees to the transportation facilities in the Sonoran Corridor.

In addition, the County has assigned a market value of the land being purchased through the possible lease/purchase of this site at approximately \$37,000 per acre, which compares to the initial purchase price of the property of \$16,000 per acre. Hence, amplifying the economic benefits associated with the County's acquisition of these lands to ensure future commercial and industrial users that are compatible with Raytheon operations.

Development of Pima County SpacePort Tucson

Of the 28 acres being occupied for World View expansion, 12 acres are dedicated to the manufacturing, assembly and administrative building of 135,000 square feet, plus site parking and an area for future building expansion. Sixteen acres are being set aside for a 700-foot diameter concrete launch pad. The World View building and manufacturing site will be under an operating agreement for World View uses. The launch pad will be used by World View for their purposes of vehicle launch, and they will have priority use of the launch pad. The SpacePort Operating Agreement and legal description are Attachment 5 to this memorandum. The launch pad will remain a public asset and be available for other commercial near-space or stratospheric uses consistent with Federal Aviation Administration (FAA) regulations and under the control of FAA Air Traffic Control. The process for federal spaceport approval has been initiated.

The Honorable Chair and Members, Pima County Board of Supervisors
Re: **World View Enterprises, Inc. Corporate Headquarters in the County Aerospace, Defense
and Technology Research and Business Park**
January 9, 2016
Page 7

A 450-foot asphalt launch pad was originally planned; however, an optional 700-foot launch pad is desired. The County will prioritize development of the 700-foot diameter launch pad, and we intend to pursue grant opportunities to construct this larger launch pad. A larger pad will significantly increase the user base; not only for balloon flight operations, but also for the ability to launch and recover a variety of experimental vehicles. Likely most significant for World View is that the larger pad accommodates heavy-lift launches and human flights, which the smaller pad would not. A large, flat, protected and secured area is difficult to find, especially one that can be scheduled for use over periods of days and has utilities. The larger launch pad will be an asset to the Aerospace Park and southern Arizona in general, since the launch pad would qualify the site as a spaceport similar to other designations in other states that are home to space industry operations.

Selection of Project Architect and Contractor

During the recruitment process to offer World View facilities in Pima County, it was necessary to quantify their exact architectural program and space needs, as well as provide them with a reliable cost estimate for building construction. The County initially selected Swaim Associates, Ltd. Architects, AIA, with Principal Phil Swaim as the Lead Architect. Swaim Associates is the firm that provided architectural services for the integrated medical facilities at The University of Arizona, which included complex laboratory, aerospace and science facilities. The architectural services required by World View are closely aligned and technically similar to the work performed by Swaim for the University.

Barker Morrissey was selected during the proposal development process, since the firm has significant complementary project experience to that required by World View. Such projects include a two-phase new construction and renovation for Texas Instruments comprised of laboratory (including Class 1000 clean room space) and research and development space, as well as office space. Barker Morrissey also completed a 65,000 square foot research and development facility for Sion Power and a 60,000 square foot medical logistics and distribution center in the Marana area.

These two firms provided months of substantial services without compensation to provide the necessary architectural programming and design and cost models to determine the reliable size, configuration and cost of constructing World View's headquarters in Pima County.

Given the required facility delivery date of November 2016 and because of their prior involvement and detailed understanding of World View requirements, the County will now select Swaim Associates, Ltd. as the Project Architect and Barker Morrissey Contracting as the Contractor using the authority granted under A.R.S. § 34-606 Emergency Procurement and Section 11.12.060 of the Pima County Procurement Code, whereby the County has

The Honorable Chair and Members, Pima County Board of Supervisors
Re: **World View Enterprises, Inc. Corporate Headquarters in the County Aerospace, Defense
and Technology Research and Business Park**
January 19, 2016
Page 8

determined that due to the compressed timeframe for design and construction of this facility, compliance with the full provisions of the statute is impracticable and contrary to the public interest . It has been determined the most expedient contract methodology for delivery of the facility is award of the Architectural Design Contract to Swaim Associates, Ltd. and a Construction Manager at Risk Contract to Barker Morrissey Contracting, Inc. for phased construction with multiple Guaranteed Maximum Price proposals as the project design progresses.

Arizona, Pima County and Tucson Achieve SpacePort Designation

Throughout the United States (US) there are a limited number of states that have any major entry into space technology. On a map of the US showing states that have entered the space technology industry, Arizona is noticeably absent (Attachment 6). Adding the World View facility and the 700-foot diameter spaceport launch pad makes Arizona, Pima County and Tucson viable competitors in the space technology industry. The facility will be named "SpacePort Tucson."

Recommendation

I recommend the Board of Supervisors take the following actions:

1. Approve the Lease/Purchase Agreement, including the Purchase Option, between Pima County and World View Enterprises, Inc. for the development of their manufacturing and administrative headquarters in the Aerospace, Defense and Technology Business and Research Park. The Lease/Purchase Agreement contains a provision for a separate first right of refusal purchase option for six acres immediately west of World View's manufacturing and administration complex for future expansion.
2. Approve the issuance of Certificates of Participation in an amount not to exceed \$15 million for the development, design, and construction of the World View Enterprises, Inc. manufacturing and administrative headquarters.
3. Approve the SpacePort Operating Agreement related to World View's operation of the spaceport on behalf of Pima County and authorize all necessary actions of the County to apply for a space port license and approval from the Federal Aviation Administration, as well as a construction-in-aid grant from the Aeronautic Division of the Arizona Department of Transportation to supplement County funding for construction of the spaceport.
4. Make the following awards:

The Honorable Chair and Members, Pima County Board of Supervisors
Re: **World View Enterprises, Inc. Corporate Headquarters in the County Aerospace,
and Technology Research and Business Park**

January 19, 2016

Page 9

A. Swaim Associates, Ltd. Architects, AIA (Headquarters: Tucson, Arizona), Not to Exceed \$850,000, including a \$50,000 contingency; Contract term January 19, 2016 through February 28, 2017; for Architectural and Engineering Design Services.

B. Barker Morrissey Contracting, Inc. (Headquarters: Tucson, Arizona); Not to Exceed \$12,400,000, including attached fixtures and equipment and an \$800,000 Contingency; Contract term January 19, 2016 through February 28, 2017; for Construction Manager at Risk Services for both preconstruction and construction services.

The County will pay all fees now estimated at approximately \$1,050,000, as well as nongovernmental utility extensions estimated at \$700,000.

In order to expedite construction under these contracts, the Board of Supervisors approves the Procurement Director to execute any and all contracts, amendments and change orders to the contracts listed above within the dollar and term limits awarded by this action. Any amendment or change order resulting in a contract value or term in excess of the Board award will be submitted to the Board for approval.

Respectfully submitted,



C.H. Huckelberry
County Administrator

CHH/mjk January 13, 2016

Attachments

Exhibit 5

Excerpts from the Deposition of Patrick Cavanaugh

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

RICHARD RODGERS; SHELBY)	
MAGNUSON-HAWKINS; and DAVID)	
PRESTON,)	
)	
Plaintiffs,)	
)	
v.)	No. C20161761
)	
CHARLES H. HUCKELBERRY, in his)	
official capacity as County)	
Administrator of Pima County;)	
SHARON BRONSON, RAY CARROLL,)	
RICHARD ELIAS, ALLYSON MILLER,)	
and RAMON VALADEZ, in their)	
official capacities as members)	
of the Pima County Board of)	
Supervisors; PIMA COUNTY, a)	
political subdivision of the)	
State of Arizona,)	
)	
Defendants.)	
_____)	

DEPOSITION OF PATRICK CAVANAUGH

Tucson, Arizona
March 30, 2018
12:55 p.m.

REPORTED BY:
Thomas A. Woppert, RPR
AZ CCR No. 50476

KATHY FINK & ASSOCIATES
2819 East 22nd Street
Tucson, Arizona 85713
(520)624-8644

1 A. Can I refer to my notes?

2 **Q. Certainly.**

3 A. These are all documents that I'm pretty sure
4 that came out in the public records request.

5 The person -- if you're asking who the person
6 was that I made contact with, it was Jane Poynter,
7 September 9th, 2014.

8 **Q. Okay. Now, one of the things that we're trying**
9 **to do is to get the chronology clear of what happened when**
10 **in this situation, so this may be a bit tedious. And I**
11 **apologize for that, but it's important that we figure out**
12 **what happened when.**

13 What I'm curious about is, Swaim & Associates
14 and Barker Morrissey, they did some work on helping to
15 design the facilities for World View before this project
16 went to the board in January of 2016; is that right?

17 A. I'd say that's correct.

18 **Q. And are you familiar with any other situation**
19 **where an architect and/or contracting firm has done**
20 **similar kind of pre-project work before the county**
21 **approves the project?**

22 A. I would think so. I would think -- pull up
23 those specific projects. I mean, we certainly -- I think
24 they engaged architects on Caterpillar. I think there was
25 preliminary consultation with -- I'm sorry. I'm drawing a

1 blank, but at some point in time, you know, before a
2 project comes forward, they want -- a client may want to
3 see, you know, exactly what is going to be entailed in
4 this construction project. They may want to have a sense
5 of local architects and that type of thing. A lot of
6 these companies are coming into Tucson. They're coming
7 from outside. It's a business attraction.

8 **Q. And in those cases, have you or anyone in your**
9 **office put the company together with the architect or the**
10 **contractor?**

11 A. No, I -- I would say going back to like
12 Caterpillar, that was a Rio Nuevo that Pima County -- you
13 know, economic development has often got a number of
14 entities involved, but I think it was Rio Nuevo that put
15 Caterpillar in contact with -- with architects and
16 possibly construction companies. I'm not sure.

17 **Q. Do you remember how you first heard of Project**
18 **Curvature?**

19 A. I do.

20 **Q. How was that?**

21 A. The -- where I mentioned that I first met
22 Ms. Poynter in my capacity as a business services
23 coordinator, I was asked to go out and meet with her at
24 the business that she had formally worked at, or she may
25 have been working there at the time, to discuss World

1 View's business needs. And that -- that would have been
2 the September 9, 2014, that I mentioned. So apparently --
3 I have a memo dated September 9th from the Deputy County
4 Administrator that I reported to, Hank Atha, asking me to
5 meet with Ms. Poynter and get information related to an
6 interest that she had in a building at Tucson Airport
7 Authority.

8 Q. And did you attend that meeting?

9 A. I did.

10 Q. And did they -- at that meeting, did you
11 discuss with either her or anyone else with World View
12 what their deadline was for getting their project
13 completed?

14 A. I think it was in broad terms. I mean, I'm
15 sure we did discuss that they were looking at an
16 accelerated process, but at that time, they were looking
17 at an existing building. They were looking at some
18 hangars over on Tucson Airport Authority property. We
19 referred to them as the Consolidated Vultee. It was a
20 manufacturer of B-24s during World War II, so very long
21 hangars. And Ms. Poynter's interest in that was the
22 nature of their manufacturing process. They needed a long
23 space for assembling the balloons and that type of thing
24 and she thought that might be ideal, so I was asked to go
25 out there and -- you know, as business services

1 coordinator, I wanted to do the outreach, meet her, find
2 out what her needs were. In this particular instance, it
3 was that she wanted information about those buildings at
4 Tucson Airport Authority and I just kind of collected the
5 information and went back to Mr. Atha.

6 Q. And you're familiar with Barker Morrissey
7 Contracting?

8 A. Yes.

9 Q. When did you first hear of Barker Morrissey?

10 A. I would be hard pressed to say a date. I think
11 there was two meetings that I was involved in when Barker
12 Morrissey was present and it was discussed.

13 Q. You're talking about the World View project?

14 A. Correct.

15 Q. Did you hear of Barker Morrissey before the
16 World View project?

17 A. Oh, I'm aware of them. I mean, they're a well
18 known company.

19 Q. And have you ever worked with them on any other
20 kinds of projects?

21 A. I have not.

22 Q. I understand that Barker Morrissey worked on a
23 project for the University of Arizona some years ago. Are
24 you familiar with that at all?

25 A. I am not.

1 **Did you pop over to Paragon?**

2 A. I did.

3 **Q. What is Paragon?**

4 A. Paragon Space Development Corporation is the
5 company that Ms. Poynter had been an executive with prior
6 to World View. I viewed it that World View was -- I won't
7 say a spinoff of Paragon, but it was certainly -- you
8 know, two of the executives from Paragon went on to start
9 World View.

10 **Q. And did you speak to Ms. Poynter at Paragon?**

11 A. I did.

12 **Q. And do you remember what your conversation was**
13 **about?**

14 A. Yeah. It was -- as I said earlier, you know, I
15 certainly talked to her about the needs that she had, the
16 requirements, her interest in the property, the
17 Consolidated Vultee property that I mentioned earlier,
18 asked about her needs, what the company would need. And
19 that's when the discussion came about of a long --
20 elongated building for the assembly of the balloons. And
21 she was very interested in that property.

22 (Deposition Exhibit 6 marked for identification)

23 BY MR. SANDEFUR:

24 **Q. Now, did you write this e-mail to Ms. Poynter**
25 **on September 10th?**

1 initial meetings with World View, it is clear they had no
2 structure regarding design and cost parameters for a new
3 manufacturing facility. I suggested they work with Swaim
4 & Associates and Barker Morrissey Contracting.

5 Do you know one way or the other whether that
6 is correct?

7 A. I wouldn't be able to say one way or the other.

8 Q. When you talked with World View in the summer
9 of 2015, do you know when it was that you -- that that
10 stage of the project really got underway?

11 MR. FLAGG: Form.

12 THE WITNESS: I'm going to need you to clarify
13 your question.

14 BY MR. SANDEFUR:

15 Q. Well, we said earlier that there was sort of a
16 two-stage process. There was fall of 2014 and then summer
17 of 2015. Can you say what month of 2015 that stage of the
18 project really began?

19 A. That project never really began. This was the
20 TIA hangars. And as I understood later -- you know, I
21 conveyed the information to my bosses, I believe that
22 would have been Mr. Hank Atha, and I may have informed
23 Dr. Moffatt because I was, you know, working closely with
24 him. I was directed to assist him. That was focused on
25 TIA hangar. And, as I understand it, I think I asked

1 Mr. Atha months down the road whether that project was
2 going to go, and it was not going to go because of an
3 unwillingness of Tucson Airport Authority to lease out the
4 hangars and also the condition of the hangers. You know,
5 1940s, they were not in the best shape. And I had
6 validated -- I had actually taken a ride out there just to
7 look at them from the outside and they were in bad shape.

8 Q. Okay. And as far as the second stage of the
9 project beginning around the summer of 2015, you were
10 involved with that; right?

11 A. I'm kind of confused as to what you're
12 referencing on the second stage. There was a second stage
13 that was related to the hangars, but if you're relating,
14 you know, the -- the second stage that involved the
15 location that World View eventually ended up in, that's a
16 totally different animal.

17 Q. Okay. And were you involved in that animal?

18 A. I was.

19 Q. Okay. So do you know when that -- that part
20 began?

21 A. Not a specific date.

22 Q. Okay. So in the memo that we looked at
23 earlier, the January 19th memo, that's in reference to the
24 second part, the whole other animal; right?

25 A. Correct.

1 Q. Okay.

2 A. It's important to differentiate those two. One
3 project never came to fruition. And that again would be
4 the airport hangars --

5 Q. Right.

6 A. -- Consolidated Vultee. And then when that
7 went away, I guess there was, you know, looking for other
8 locations.

9 Q. Uh-huh.

10 A. Which is probably indicated in those notes that
11 I had earlier where we're looking at different places.

12 Q. Right.

13 A. So --

14 Q. And I'm more -- I'm more interested in that
15 second stage here because of the -- that's what this memo
16 is referring to here.

17 A. Again to clarify, second stage being the
18 project that eventually put World View in the building
19 that they're in today.

20 Q. That's right.

21 A. Thank you, sir.

22 Q. Sorry. So in that -- with regard to that, it
23 says in this January 19th memo that Pima County had been
24 working on that for six months. Is that correct?

25 A. That's what it says.

Exhibit 6

Excerpts from Deposition of John Moffatt

IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

RICHARD RODGERS; SHELBY)
MAGNUSON-HAWKINS; and)
DAVID PRESTON,)
)
) Plaintiffs,)
)
) vs.) No. C20161761
)
CHARLES H. HUCKELBERRY, in)
his official capacity as)
County Administrator of)
Pima County; SHARON)
BRONSON, RAY CARROLL,)
RICHARD ELIAS, ALYSON)
MILLER, and RAMON VALADEZ,)
in their official)
capacities as members of)
the Pima County Board of)
Supervisors; PIMA COUNTY,)
a political subdivision of)
the State of Arizona,)
)
) Defendants.)

)

DEPOSITION OF JOHN MOFFATT, PH.D.

March 19, 2018
Tucson, Arizona
8:13 a.m.

Reported by:
Julianne Roesly, RPR, CR, CSR
CR #50302 (AZ), CSR #7756 (CA)

KATHY FINK & ASSOCIATES
2819 East 22nd Street
Tucson, Arizona 85713
520.624.8644

1 rectangular building.

2 They already had a building concept, so we knew
3 what the shape was, so we just made sure it fit, where
4 it fit, and those kind of things.

5 Other cases, no, it's really the companies work
6 with their own architects. They often come in with a
7 footprint. You know, they already know what that
8 building's going to look like.

9 We're talking to a -- a car parts manufacturer
10 and they -- they could tell you exactly the dimensions
11 of that building, so we know exactly where to put it
12 from that standpoint.

13 So that's -- that's a typical for us to get
14 that far into it, other than to just figure out how --
15 if it's going to fit on the parcel.

16 **Q. You say "a typical." You mean that is typical**
17 **or not typical?**

18 A. It is, it is typical for us to make sure the
19 building will fit with parking and zoning and that sort
20 of thing, but not to get into -- I'm not an architect or
21 not -- it's just how is it going to fit.

22 **Q. So when did you first hear about Project**
23 **Curvature?**

24 A. I heard about it probably a year and a half
25 before they -- you know, we really got serious about it.

1 And they were not using a site selector, they were
2 talking individually to various entities, and they were
3 looking for what -- what incentives they could get.

4 And so they were talking to us and then it just
5 kind of went cold. And then we heard they were talking
6 to the governor's office, and then we heard they were
7 talking to somebody else. And probably a year later,
8 they came back and they were more serious at this point.
9 Things were starting to -- to gel. So it was probably,
10 oh, I don't remember the exact years, I've got to
11 remember -- back up because it took a year to develop.
12 2015 -- probably '14, 2014.

13 **Q. Do you remember when you -- how you first heard**
14 **it?**

15 A. I got a -- got a call from Alex Rodriguez, who
16 was the Arizona Technol- -- Technology counsel, who was,
17 I guess, working with them as a consultant. And he --
18 he just kind of brought me up to speed. We met with
19 Taber and Jane to understand what their needs were.

20 At that point in time -- the initial -- and
21 that was it. And -- and they didn't have any specific
22 needs at that point. They hadn't really talked to
23 anybody else, you know, around the country. So we
24 just -- we just kind of said, Well, you know, we're
25 interested in trying to keep you here in Tucson. Let us

1 know what we can do.

2 Q. And Taber and Jane are with World View; right?

3 A. They're the principals of World View.

4 Q. Do you remember when you first discussed the
5 project with Mr. Huckelberry?

6 A. Yeah, that was not early on. It was later.
7 And, actually, they had met with him before I was
8 involved.

9 And I think that this -- their approach was
10 actually more direct, whereas site selectors would work
11 through Sun Corridor and come to our office and that
12 sort of thing. And they -- they had met directly with
13 Mr. Huckelberry, and then I became -- you know, after he
14 had met with them, he then alerted me to the project.

15 Q. And that -- and he alerted you in 2014, you
16 said?

17 A. Yeah, it probably was. Probably 2015, I would
18 say, early -- I don't remember the dates, I'm sorry.

19 Q. All right.

20 A. But it would be earlier 2015, and then --

21 Q. Did he tell you at the time, if you remember,
22 what World View's deadline for completing the project
23 was?

24 A. He did, and he -- he had said they needed --
25 they had a critical -- he wasn't specific and they were

1 competitive.

2 At that time you're saying that that was not
3 an -- that what was not being discussed was to make the
4 facility for balloon manufacturing. It was for a
5 different project?

6 A. No, it was -- it was being --

7 Q. I see.

8 A. These were the only buildings in town that were
9 long enough to accommodate their balloon manufacturing
10 requirement.

11 Q. Okay.

12 A. And that's why they were looking at these
13 buildings. And the -- the issue was how much it was
14 going to take to rehabilitate these World War II
15 buildings because they leaked and had electrical
16 problems and a lot of other things.

17 Q. In planning out how to renovate those
18 facilities, did you speak to an architect at that time?

19 A. That was Tucson International Airport did that.

20 Q. And do you know if they, in fact, did speak to
21 an architect at that time?

22 A. I -- I don't -- I -- I do believe they did
23 because they came up with some cost estimates, but I
24 don't know how they came up with them.

25 Q. All right. All right. Look at the next

1 document here.

2 (Exhibit 4 marked for identification.)

3 BY MR. SANDEFUR:

4 Q. Is this your handwriting?

5 A. It is.

6 Q. And this is dated July 9th, 2015; is that
7 right?

8 A. That's correct.

9 Q. What is this document?

10 A. Well, it's a bunch of notes that obviously --
11 that I took related to the in- -- our major issue with
12 Raytheon is interference with their radar and -- and
13 radio communications.

14 So what we were concerned about, and this is
15 where we were going through what -- what kind of
16 interference would be presented as a part of this.

17 Where you see in the middle of the page, it
18 says, NASA's most recent payload provides a strip -- a
19 gore strip and top weight for destruction.

20 The gore strip is used for radar signature, and
21 that was part of what we were talking about with the
22 whole Raytheon operation.

23 The -- and then toward the bottom, they're
24 talking about who -- who they did work for. And you can
25 see NOAH for flight control. And their -- their -- at

1 the very bottom, it says that they are classified --
2 their Stratellites are classified as spacecraft, so --

3 **Q. And here toward the bottom, it says, "R & D &**
4 **MFG south of the airport."**

5 A. Right.

6 **Q. What does that refer to?**

7 A. Research and development. And "MFG" is
8 manufacturing south of the airport.

9 **Q. Manufacturing what?**

10 A. Of the balloons and the Stratellites.

11 **Q. And Stratellite, what is a Stratellite?**

12 A. A Stratellite is essentially the device that
13 hangs in front of the balloon where they mount all the
14 instruments or the electronics that -- that -- that's
15 where the mission actually occurs is on those
16 Stratellites. That's what is then released from the
17 balloon and comes back down and brings the payload back.

18 **Q. So these notes here, then, are a -- are -- are**
19 **these notes a conversation that you -- notes of a**
20 **conversation you had with someone regarding**
21 **Project Curvature specifically?**

22 A. Yeah. And I typically put who I'm talking to
23 at the top, but I didn't this time. But the "Paul," the
24 Paul speaks of Paul Kramkowski at Raytheon and the radio
25 crew at -- that -- that was referencing the radio crew

1 at Raytheon.

2 Q. I'll move on to our next document here.

3 (Exhibit 5 marked for identification.)

4 BY MR. SANDEFUR:

5 Q. This is a -- dated August 7th, 2015; is that
6 right?

7 A. That's correct.

8 Q. And this is from Mike Hammond at Picor Real
9 Estate, and you're cc'd on this.

10 Do you remember this E-mail?

11 A. I do.

12 Q. And it says here, "I spoke to Phil Swaim and he
13 is on board with doing some preliminary design and
14 pricing for the County that Chuck indicated he would
15 need."

16 What's he referring to there?

17 A. This goes back to what I had said earlier when
18 we were starting to talk about the building, we needed
19 to know what the costs were going to be. And Mike
20 Hammond was -- CBRE earlier was the airport
21 representative, but Mike Hammond was the realtor working
22 with World View.

23 And so what -- obviously, this was in -- in a
24 meeting with Chuck that I had -- I don't believe that I
25 attended, but where it said that Chuck wanted to know

1 what the cost was going to be of the building. And so
2 that's his -- his proposed solution was Phil Swaim.

3 Q. So when -- so you're saying that sometime
4 before August 7, 2015, in order to decide what the -- in
5 general terms what the cost and the design of the
6 building would be, that Mr. Huckelberry spoke with
7 Phil Swaim about the size or location and did some
8 preliminary design work; is that right?

9 A. Yeah, the main -- I wasn't there --

10 Q. Uh-huh.

11 A. -- so -- but my understanding was that, you
12 know, he told the principals at that meeting that said
13 we need to know what the cost of this project is going
14 to be.

15 Q. When did you first -- well, let me back up.

16 Did you see the preliminary design and pricing
17 that Swaim prepared in August of 2015?

18 A. I saw the preliminary design. I didn't -- I
19 don't think there was pricing associated with that. I
20 think the Barker guys were brought on board after that
21 to do the -- to do more specific pricing.

22 Q. Okay. So do you know exactly when Swaim was
23 asked to provide this service?

24 A. Probably right now, August. That's my best
25 knowledge of that.

1 **Q. Uh-huh.**

2 A. -- you know, once everything had been put
3 together.

4 So, you know, often the Board wants to know
5 what we're doing on projects, but I would be speculating
6 if I -- if I do so. I don't know if this was the first
7 he had told them of anything, but this was kind of the
8 official one.

9 **Q. So are you familiar with any reports -- any**
10 **official reports prior to January 19th, 2016, about**
11 **the -- about Project Curvature to -- reports to the**
12 **Board?**

13 A. No.

14 **Q. And had the Board given you or your staff the**
15 **authority to negotiate with Barker Morrissey and Swaim**
16 **six months prior to January 19th, 2016?**

17 MR. FLAGG: Foundation.

18 THE WITNESS: Not -- not that I'm aware of.

19 BY MR. SANDEFUR:

20 **Q. Was it, in fact, six months that you had been**
21 **working to retain -- to get Project Curvature?**

22 A. Well, in earnest. Like I said, we had talked
23 to them earlier and -- but certainly, the -- and this
24 was dated January, so you go back to July and our
25 meetings in earnest started in August, so --

1 Q. Okay.

2 A. -- I would say, yes, that's correct.

3 Q. Because it looks like what we've been talking
4 about here was -- I mean, you could go back to
5 September 9th or so of 2014.

6 A. Right, but those were the initial -- that
7 September of 2014 was not talking about this property.
8 It was talking about the airport properties.

9 Q. I see.

10 A. And so that was -- that was the initial
11 discussion set. And then later on, they -- when they
12 couldn't make that work and they couldn't find anything
13 else, they came back to us in 2015 and that's when we --
14 in more earnest. And that's really when Sun Corridor
15 and everybody got more engaged.

16 Q. I see, okay.

17 Okay. So I think that's it for that document
18 for now. We might come back to that, so you might just
19 keep that and move on to the next document here.

20 (Exhibit 14 marked for identification.)

21 BY MR. SANDEFUR:

22 Q. Now, this memo here is dated November 2nd,
23 2015?

24 A. Right.

25 Q. And this -- that would make it about six weeks

1 BY MR. SANDEFUR:

2 Q. Do you know whether Mr. Huckelberry suggested
3 that?

4 A. I do not know that.

5 Q. But we do know that that came together, Barker
6 Morrissey and Swaim and World View, they came together
7 sometime around early August of 2015; is that right?

8 A. Correct.

9 Q. Do you know whose idea it was that the County
10 would provide World View with a balloon construction
11 facility?

12 A. That -- I actually wasn't in those earlier
13 discussions with Atha, Cavanaugh, and -- and
14 Huckelberry. I assume it was one of those three.

15 Q. So if the -- yeah, lets go back to the previous
16 thing, the January 19th, 2016, memo.

17 During the negotiations that's referred to
18 here, you didn't -- do you remember where it says, "For
19 the last six months," do you remember having
20 conversations during that time when World View said when
21 it would need its project completed?

22 A. Yes.

23 Q. And what were those conversations? What did
24 they say was their deadline?

25 A. They said they had to have a facility up and

1 running by the end of the year in 2016 due to projects
2 that they had.

3 And, you know, they would not discuss who the
4 client was. I later learned it to be NASA, but they --
5 they had a contract that they needed to perform on at
6 that point.

7 Q. And when did you learn that?

8 A. I don't remember. It was during the general
9 discussions where we were working on it.

10 Q. Okay.

11 A. But it was -- it was certainly early on when
12 we -- it was very emphatic that they had to meet that
13 deadline.

14 Q. Okay. And that was made emphatically clear
15 early on in the process?

16 A. It was.

17 Q. So roughly speaking --

18 A. Not in 2014, but in 2015.

19 Q. In 2015, okay.

20 And at that time when it was -- when they said
21 that, did you push back at all? Did you say, you know,
22 this is impractical, or, you know, difficult to do?

23 A. We said it was difficult to do, but, you know,
24 the -- the issue that we were up against is that -- is,
25 like I said, as I was doing the research, you know, you

1 research your competitor. Florida was repurposing the
2 Kennedy Space Center with federal dollars. And they had
3 ramp -- they had launch space and they had big buildings
4 ready that -- that they were able to use federal dollars
5 to repurpose, and those could all meet that deadline.

6 And the same was true in New Mexico, so they
7 had the Space America in New Mexico, plus they had a
8 building in Las Cruces that could meet the deadline, so
9 we felt we had a legitimate issue to deal with.

10 Q. And on this January 19th memo, the long one
11 here --

12 A. Uh-huh.

13 Q. -- on page 0039, it says, "During the
14 recruitment process" --

15 A. I don't have that.

16 Q. That's about --

17 A. Oh, I see.

18 Q. It's about halfway down the page.

19 A. I got it.

20 Q. It says, During the recruitment process, it was
21 necessary to quantify the architectural program and
22 space needs.

23 Do you see that?

24 A. I do.

25 Q. And it says, The County initially selected

1 can't tell you about, but is Rick Engineering, somewhat
2 the same. This -- this is a very strange-shaped
3 building -- or parcel, and it was -- it's a very large
4 building. And is this really going to work? Can we
5 rotate it for -- for a specific issue because of Davis
6 Monthan?

7 And they -- you know, they did all that work at
8 no cost.

9 **Q. And did you consider approaching GLHN or**
10 **Rick Engineering or any of these other firms that do**
11 **pro bono work for the World View project?**

12 A. No.

13 You know, again, I understand these letters say
14 that the County selected Swaim, but actually, Swaim had
15 been brought on board by Mike Hammond early -- earlier
16 on, so they really had a running start on this and we
17 didn't feel it necessary to duplicate that.

18 **Q. I get confused because there's so many names.**
19 **Who's Mike Hammond?**

20 A. Mike Hammond was the president of Picor.
21 There's an E-mail --

22 **Q. Right.**

23 A. -- in here earlier.

24 But we've also done the same thing I mentioned
25 with Sundt, you know, where -- where we were trying to

1 Q. And I think early on in the deposition you
2 mentioned that at some point talks kind of went cold.
3 Was that after September 2014?

4 A. Correct.

5 Q. And so we basically just -- you didn't hear
6 from World View for a while.

7 When, then, do -- did the conversations with
8 World View heat up again?

9 A. In the summer of 2015.

10 Q. So that's in that --

11 A. Yeah.

12 Q. -- roughly six months before January 2016 time
13 frame?

14 A. Correct.

15 Q. And then when did World View say to
16 Pima County, We're -- we're willing to do the deal,
17 let's finalize it, if you know?

18 A. It was in probably late November.

19 Q. Late November of 2015?

20 A. Of 2015. I remember it was right around
21 Thanksgiving.

22 Q. And there's a memo -- I'm sorry, there are a
23 lot of exhibits here.

24 I think it's Exhibit 14, it's a November 2nd
25 memorandum from Mr. Huckelberry to Tom Burke. I might

1 are about.

2 Q. Okay. So those discussions are ongoing at this
3 time?

4 A. Correct.

5 Q. Item two, it's the third line down in your
6 notes, appears to me to say, "Go to FLA to lock down
7 deal." What does that mean?

8 A. That was a comment made by the World View
9 people that -- that they were going down there to get
10 their final deal identified with us bas- -- Florida, and
11 then at that same meeting, we also learned that they
12 were going to Jacksonville, so they had two options in
13 Florida.

14 Q. What did you understand it to mean when they
15 said they were going to lock down their deal?

16 A. Their goal, just like they were trying to work
17 with us to find out the cost and what the final deal
18 was. They were going, in my opinion, there to identify
19 exactly what the deal that Florida was going to offer.

20 Q. So that they can make a decision about which
21 deal, given whatever factors they're considering, is the
22 one that they want to take?

23 A. Yes. If you're going to buy a car, you figure
24 out what the alternative is going to cost and what you
25 want to do.

1 Q. And so was it your understanding at this time,
2 September 2015, that World View was in the process of
3 negotiating with other jurisdictions or discussions with
4 other jurisdictions?

5 A. Yes. We knew they were seriously in
6 discussions.

7 MR. FLAGG: That's all I have.

8 MR. SANDEFUR: I do actually have one final
9 question.

10 FURTHER EXAMINATION

11 BY MR. SANDEFUR:

12 Q. So in January 2016, the County -- I mean, we
13 saw that memo, the Board approves the thing, and it --
14 the project had to be done by November 2016; is that
15 right?

16 A. Right.

17 Q. Why wasn't it possible to hire a -- another
18 contractor or another architect to build that project in
19 that amount of time?

20 MR. FLAGG: Foundation.

21 THE WITNESS: In my opinion, because of the
22 time. You could not get anybody up to speed in time,
23 you know -- number one, you had to start again with
24 architects, and if -- and even if you had a contractor
25 that could build it that fast, you had to -- you had to

1 get an architect to design it. And this -- and these
2 were not final designs, either. These were preliminary
3 designs, probably 30 percent max, 30 percent being a
4 term of how far architectural plans go. And so you
5 would have to finish the design, but they would have to
6 get all the basics.

7 And so it was very clear that -- and that was
8 why I -- you know, I -- I call people to do sanity
9 checks, I call them. And, you know, Sundt said they
10 couldn't even build a building in that time, let alone
11 design it, and so that -- that was our --

12 **Q. Because Barker Morrissey and Swaim had been**
13 **involved from an early date, they were up to speed**
14 **already?**

15 A. Clearly.

16 MR. SANDEFUR: Well, I think that's all the
17 questions --

18 MR. FLAGG: Tim, can I just follow up on what
19 you just asked?

20 MR. SANDEFUR: Sure.

21 FURTHER EXAMINATION

22 BY MR. FLAGG:

23 **Q. In your experience, if you know, how much time,**
24 **approximately, does the -- just the procurement process**
25 **itself add to that whole time frame of moving into**

1 **design and construction of a building?**

2 A. It's typically at least 60 days, if not 90.

3 My -- my -- on road projects that I've been involved in,
4 it's been 60 to 90 days.

5 **Q. Okay.**

6 MR. FLAGG: That's all I have.

7 MR. SANDEFUR: All right.

8 THE REPORTER: Did you want a copy?

9 MR. FLAGG: Yes, E-trans.

10 And he'll read and sign.

11 (The deposition concluded at 10:16 a.m.)

12 (Signature of the witness requested.)

13

14

JOHN MOFFATT, PH.D.

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Exhibit 7

Excerpts from Deposition of C.H. Huckelberry

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

RICHARD RODGERS; SHELBY)	
MAGNUSON-HAWKINS; and DAVID)	
PRESTON,)	
)	
Plaintiffs,)	
)	
v.)	No. C20161761
)	
CHARLES H. HUCKELBERRY, in his)	
official capacity as County)	
Administrator of Pima County;)	
SHARON BRONSON, RAY CARROLL,)	
RICHARD ELIAS, ALLYSON MILLER,)	
and RAMON VALADEZ, in their)	
official capacities as members)	
of the Pima County Board of)	
Supervisors; PIMA COUNTY, a)	
political subdivision of the)	
State of Arizona,)	
)	
Defendants.)	
_____)	

DEPOSITION OF CHARLES HUCKELBERRY

Tucson, Arizona
April 6, 2018
8:27 a.m.

REPORTED BY:
Thomas A. Woppert, RPR
AZ CCR No. 50476

KATHY FINK & ASSOCIATES
2819 East 22nd Street
Tucson, Arizona 85713
(520)624-8644

1 A. No, I'm not aware of that.

2 Q. I'll move on to the next document here.

3 (Deposition Exhibit 3 marked for identification)

4 BY MR. SANDEFUR:

5 Q. Do you know what this document is?

6 A. It would appear to be a list of work items
7 related to the World View estimate by Barker Morrissey.

8 Q. And it says here August 25th, 2015. Do you
9 know whether that date is correct?

10 A. I don't know.

11 Q. Do you remember having seen this document
12 before at any time?

13 A. No.

14 Q. Do you know whether this is a list of
15 assumptions that Barker Morrissey prepared for its
16 consultation with the county?

17 A. I don't know.

18 Q. Now, when a -- just generally speaking, in your
19 general expertise, when the county wants to hire a
20 contractor for a project, it's typically required to go
21 through a process of notifying -- of a public
22 notification, and then companies bid for that project; is
23 that right?

24 MR. FLAGG: Form.

25 THE WITNESS: It depends on what type of

1 contract.

2 BY MR. SANDEFUR:

3 Q. So how does that depend?

4 A. Did you say contractor or did you say
5 consultant?

6 Q. A contractor.

7 A. Contractor. A contractor could be selected
8 through any number of means of procuring their services,
9 one of which is to -- you know, an open, competitive bid.
10 Another is selection of contractor -- contractor --
11 construction manager at risk model. There's a number of
12 models that are allowed in the statute.

13 Q. So is it your understanding that no open bid is
14 required for a contractor at risk?

15 MR. FLAGG: Form.

16 THE WITNESS: A contractor at risk typically
17 comes from a qualified selection process which is then
18 simply a method of determining who might be the most
19 qualified to actually build a project based on their
20 qualifications.

21 MR. FLAGG: And, Tim, I'll just say so the
22 record's clear the term is construction manager at risk.

23 MR. SANDEFUR: Okay.

24 BY MR. SANDEFUR:

25 Q. You referred to this qualified selection

1 **process. Can you describe that process?**

2 A. The qualified selection process for contracting
3 is simply to determine which contractors have experience
4 in a particular construction field and type of
5 construction that is probably going to be needed or
6 required for a particular project.

7 Q. And was a qualified selection process followed
8 in the case of Barker Morrissey in this -- in the World
9 View project?

10 A. I believe they were directly selected.

11 Q. You mean Swaim also?

12 A. Correct.

13 Q. Now I want to show you this document here.

14 (Deposition Exhibit 4 marked for identification)

15 BY MR. SANDEFUR:

16 Q. Do you recognize this document?

17 A. Yes. It's an internal memorandum from our
18 department of transportation to the procurement director.

19 Q. And on page two where it says approved, C.H.
20 Huckelberry, is that your signature?

21 A. Yes, it is.

22 Q. It looks to me like this is a request for an
23 emergency procurement of materials to repair a roadway
24 that was destroyed during a storm. Do you agree with
25 that?

1 the World View situation, there was a deadline that needed
2 to be met, so would you say that that was a similar
3 situation to this one?

4 A. No.

5 Q. Why not?

6 A. In this case, it's really talking about
7 planning for continuing air-conditioning services in a
8 public building. In the World View case, it's talking
9 about meeting a deadline as a condition of economic
10 expansion.

11 Q. And when it says here an elevated level of
12 preplanning, coordination and expertise, do you think that
13 in the World View case there was a need for preplanning,
14 coordination and expertise -- I mean, an unusual need for
15 preplanning, coordination and expertise in that case?

16 A. Yes.

17 Q. Was it your view that -- when working on the
18 World View project, was it your view that the consequences
19 of not completing the construction for World View by
20 November of 2016 were considerable?

21 A. Yes.

22 Q. If that's the case, why did you not go through
23 the process of preparing a memo like this with regard to
24 Swaim or Barker Morrissey?

25 A. The memorandum and analysis came and is

1 Q. And at the beginning of paragraph three, it
2 says, I suggested World View should conduct conceptual
3 land use and site development planning and perhaps work
4 with Architect Phil Swaim.

5 Did you make that suggestion?

6 A. Yes.

7 Q. Why did you suggest they work with Phil Swaim?

8 A. I believe that Phil Swaim had already been
9 working with them through PICOR and that in developing
10 this new, unique manufacturing facility, it had certain
11 parameters that obviously needed to be better defined in
12 order to determine size and scope of the building and what
13 the building needed to do to be their headquarters for
14 manufacturing.

15 Q. When you say that they were already working
16 with Swaim through PICOR, what are you referring to?

17 A. I'm referring to what -- we believed that Phil
18 Swaim had already been -- PICOR was the realty
19 representative for World View and my -- my guess is that
20 PICOR recognized the fact that you have to have some
21 fundamental understanding of what you're going to need for
22 a manufacturing facility, and that comes through
23 programming associated with the qualified architect. And
24 Phil Swaim was a pretty well known architect and
25 probably -- my guess is PICOR wanted Phil Swaim to work

1 with them.

2 Q. This relationship between Swaim and World View,
3 was that with regard to renovating the TIA hangars?

4 A. I don't know whether they were brought in on
5 the renovation of the -- of those hangars.

6 Q. What led you to believe that Swaim and World
7 View had a pre-existing relationship?

8 A. Simply it probably came from conversations that
9 some of our staff had with World View and perhaps Mike
10 Hammond of PICOR.

11 Q. Did you discuss that they work with any other
12 architects?

13 A. No.

14 Q. Why not?

15 A. Well, simply if they had a previous arrangement
16 with a highly qualified architect, I wasn't going to
17 interfere with it.

18 Q. And this project here that you're talking about
19 in this August 2015 memo, was this focused on creating a
20 building for balloon manufacturing?

21 A. Yes.

22 Q. And this was the second phase of the project?
23 You mentioned that there were two phases. Was this the
24 second phase of the project?

25 A. No, there was the first phase, which was the

1 false start with the old Tucson Airport Authority hangars,
2 and that was trying to retrofit an existing building.
3 This was a phase that began, again, in July or August of
4 2015 for a new building.

5 Q. Did you suggest that World View contact Barker
6 Morrissey in August of 2015?

7 A. No.

8 Q. Do you know when that suggestion was made?

9 A. I think that suggestion was made in -- what I
10 understand, was made by Phil Swaim, who had experience
11 with Barker Morrissey as a contractor associated with the
12 type of manufacturing facility and type of steel frame
13 construction and suggested that they be engaged mostly for
14 the purpose of cost estimating and determining what is
15 typically in the vernacular of contractors and architects
16 constructability analysis associated with a new building.

17 Q. So you're saying Swaim had this pre-existing
18 relationship with Barker Morrissey and that they were the
19 ones that suggested that Barker Morrissey might be a good
20 contractor for this project?

21 A. That's my understanding.

22 Q. Did you ever recommend any other contractor for
23 the project?

24 A. No.

25 Q. Why not?

1 other contractor could complete the project before
2 November 2016?

3 A. No.

4 Q. Next document here.

5 (Deposition Exhibit 21 marked for identification)

6 BY MR. SANDEFUR:

7 Q. Do you recognize this document?

8 A. Yes.

9 Q. And this is a letter dated December 23rd, 2015.
10 Down at the bottom of the first page, there's this kind of
11 long paragraph and it starts out with, World View accepts
12 the Pima County proposal.

13 What proposal is that referring to?

14 A. The proposal is a letter that I sent to them
15 on, I think, October 23rd.

16 Q. And below that toward the end of the paragraph,
17 it says, we agree that Swaim Associates will be the
18 architect and Barker Morrissey the builder; is that right?

19 A. That's correct.

20 Q. So was it your suggestion that Swaim &
21 Associates be the architect and Barker Morrissey be the
22 building in that October thing you just referred to?

23 A. It was -- generally, yes.

24 Q. I'm going to go back to this January 19th,
25 2016, memo that's Exhibit 16. And on page 39, following

1 in a new contractor to do what had already been
2 accomplished through either design or construction
3 estimating would have delayed the project to where the
4 deadline could not have been met.

5 Q. The reason I asked is because that's like a
6 year or almost a year. It's like 11 months. And I don't
7 know anything about contracting myself, but I would think
8 that you could build a building within 11 months. Am I
9 wrong about that?

10 A. You're generally wrong about that. My guess is
11 when you look back at the building and delivering this
12 building in the timeframe it was, it's pretty much a
13 record setter. Most construction contracts on new
14 buildings is no sooner than typically 18 to 24 months.

15 Q. And with regard to Swaim, did you make any
16 effort to find out whether another architecture firm could
17 do the project before November of 2016?

18 A. No, I did not.

19 Q. And why not?

20 A. Simply because of their prior involvement in
21 understanding the programming of the -- of the needs for
22 the building and then the design. Again, bringing in
23 another architect would have meant that we would not have
24 been able to come close to meeting the deadline
25 established.

1 Q. Did you contact any architecture firms to find
2 out whether that was in fact the case or was that your
3 working assumption?

4 A. That's my working assumption based on my
5 experience.

6 Q. Did you try to determine what amount of
7 competition would have been practical under these
8 circumstances with regard to the Swaim or Barker Morrissey
9 contracts?

10 A. No, I did not.

11 Q. It says on this document -- this is this
12 January 2016 report to the board. It's a little bit out
13 of order, so this is the very last page, which is number
14 41. At the top of that page, it says that you've
15 determined that due to the compressed timeframe for design
16 and construction of the facility, compliance with the full
17 provisions of the statute is impracticable and contrary to
18 the public interest.

19 When you said impracticable, what did you mean
20 there?

21 A. What I meant was that doing -- using a
22 conventional process, we would not have been able to meet
23 the deadlines established by World View as obtaining an
24 operational building.

25 Q. Have you worked with other architects on

1 Q. So would it surprise you if it was higher than
2 250?

3 A. No.

4 Q. How long have you been county administrator?

5 A. I've been county administrator since December
6 of 1993, roughly 25 years.

7 Q. And during that period of time, how long has
8 the county been involved in economic development?

9 A. We like to say we've been involved in economic
10 development for a very long time, the entire period;
11 however, we became very active in economic development
12 after enduring the great recession where our tax base
13 shrank by 26 percent.

14 Q. So maybe going back to approximately 2007,
15 2008?

16 A. It was clear that in 2007 and '8 we had to do
17 something. And I believe we began to formulate our plans
18 and developed an economic development plan in three-year
19 increments with the first, I believe, official plan coming
20 out in 2013 that had a very specific series of action
21 items to grow the tax base back.

22 Q. So -- well, let's just say going back to 2013
23 then. Have you ever seen a deal like the World View deal
24 in that time other than this deal?

25 A. No.

1 Q. Have you ever been involved in a project in
2 which the county was expected to complete a building of a
3 similar scale within the timeframe that World View
4 requested in this deal?

5 A. No.

6 Q. I want to talk a little bit about the
7 timeframe. And I'm going to use a couple of -- well,
8 maybe only one. This was marked as Exhibit 20. It's a
9 memorandum from you to Tom Burke dated November 2nd, 2015.
10 I want to direct your attention to -- I think it's the
11 second to last paragraph that starts with, the purpose of
12 this memorandum is twofold.

13 Do you see that?

14 A. Yes, I do.

15 Q. And that paragraph, I'll just summarize it, you
16 can tell me if I don't do so accurately, is asking
17 Mr. Burke -- or directing Mr. Burke to ask the procurement
18 director the most appropriate method of selecting Swaim
19 Associates to complete the design. And at the end of that
20 paragraph, it says, if they, they being World View, I
21 believe, choose Pima County to locate their headquarters.

22 A. Yes, that's correct.

23 Q. Okay. So as of November 2nd, 2015, was it your
24 understanding that World View had not yet selected Pima
25 County to locate its headquarters?

1 A. Yes, as of November the 2nd, they had not
2 responded to my letter of October 23rd.

3 Q. And as I understand your testimony, they did
4 not in fact respond to that letter until December 23rd in
5 the letter that's been marked Exhibit 21; is that right?

6 A. That is correct.

7 Q. And so before December 23rd, 2015, is it fair
8 to say the county didn't know from the World View side
9 whether World View was willing to enter into this deal?

10 A. That's correct.

11 Q. Was Pima County in competition with other
12 jurisdictions for the location of World View's
13 headquarters and launch pad?

14 A. Yes, we were.

15 Q. Can you summarize what you know about the other
16 offers that were out to World View at that time?

17 A. Initially we were told of three separate state
18 competitions, one from Florida, one from New Mexico, and
19 Texas was referenced. I don't think we did ever -- at
20 least I don't recall if we could verify that Texas was a
21 real competitor, the Houston area. But we did verify that
22 Florida, I believe -- I think it was Jacksonville or
23 wherever they have space facilities in Florida that were
24 being repurposed from federal facilities that was a direct
25 competitor. And New Mexico had a similar facility located

1 in the Las Cruces/White Sands area that was also a
2 competitor trying to attract World View out of Pima
3 County.

4 Q. So when you received the December 23rd, 2015,
5 letter from World View that's been marked Exhibit 21 --

6 Well, first of all, is it fair to say that that
7 document includes the conditions under which World View
8 would agree to the deal to remain in Pima County?

9 A. Yes. In my conversations specifically with
10 Jane Poynter, she made it clear that they could move to a
11 competitor state and begin operations almost immediately
12 and that it was imperative that they be in a building and
13 open for business before the end of 2016. And I believe
14 they put the date of November 16 on their letter.

15 Q. And so at that time, December 23rd, 2015,
16 thereabouts, was it a possible consequence to Pima County
17 that if the county couldn't comply with World View's
18 timeframe, World View would move its headquarters to
19 another jurisdiction?

20 A. It was our understanding that if we could not
21 meet the terms and conditions of the letter, they would
22 relocate to another state.

23 Q. I want to go back to your January 19 memorandum
24 which has been marked Exhibit 16. Does that document
25 contain your written justification for the selection of

Exhibit 8

Excerpts from Deposition of Brian Barker

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

RICHARD RODGERS; SHELBY)	
MAGNUSON-HAWKINS; and DAVID)	
PRESTON,)	
)	
Plaintiffs,)	
)	
v.)	No. C20161761
)	
CHARLES H. HUCKELBERRY, in his)	
official capacity as County)	
Administrator of Pima County;)	
SHARON BRONSON, RAY CARROLL,)	
RICHARD ELIAS, ALLYSON MILLER,)	
and RAMON VALADEZ, in their)	
official capacities as members)	
of the Pima County Board of)	
Supervisors; PIMA COUNTY, a)	
political subdivision of the)	
State of Arizona,)	
)	
Defendants.)	
_____)	

DEPOSITION OF BRIAN BARKER

Tucson, Arizona
April 2, 2018
8:50 a.m.

REPORTED BY:
Thomas A. Woppert, RPR
AZ CCR No. 50476

KATHY FINK & ASSOCIATES
2819 East 22nd Street
Tucson, Arizona 85713
(520)624-8644

1 Q. Do you work with him often?

2 A. No.

3 Q. Did you work with him on any of the projects
4 you mentioned, either the Texas Instruments or the
5 recycling or the EuroFresh projects?

6 A. No.

7 Q. Have you worked with him on any county projects
8 prior to the World View project?

9 A. No.

10 Q. Do you know Mr. Huckelberry?

11 A. Yes.

12 Q. How long have you known him?

13 A. Uncertain. It's -- I know him -- I don't even
14 know if I could say I know him. I've met him.

15 Q. Have you worked with his -- with him or his
16 staff on any prior county projects?

17 A. I don't believe so.

18 Q. Now, one of the things that I'm trying to do in
19 these depositions is try and figure out exactly the
20 chronology of what happened when in the setting up of this
21 project, so these questions that I'm going to ask might
22 get a little bit complicated and there's a lot of paper
23 and stuff. But what I'm trying to do is try and figure
24 out what happened when, so I hope you'll bear with me on
25 that.

1 When did you first learn of the existence of
2 World View?

3 A. I believe it was August of 2015.

4 Q. And was that under the name Project Curvature?

5 A. No.

6 Q. When was the first time that you heard the term
7 Project Curvature?

8 A. I don't recall.

9 Q. Do you think it would have been around August
10 of 2015 or earlier?

11 A. Later.

12 Q. Later.

13 How did you first learn about World View?

14 A. The project manager came into my office and let
15 me know that he was called about providing some estimates
16 for the project.

17 Q. And about what time was that? Was that August
18 of 2015 or earlier?

19 A. I believe it was August.

20 Q. And the project manager, that's somebody who
21 works in your office; right?

22 A. Yes.

23 Q. And do you remember who it was that contacted
24 him?

25 A. Yes.

1 Q. Who was that?

2 A. Phil Swaim.

3 Q. Now, I'm going to show you some documents.

4 Let's start with this one here.

5 (Deposition Exhibit 1 marked for identification)

6 BY MR. SANDEFUR:

7 Q. Now, this memo is dated November 2nd, 2015.

8 Have you seen this document before?

9 A. I don't recall seeing this.

10 Q. Okay. In the third paragraph here, it says, in
11 our initial meetings with World View, it was clear that
12 they had no structure regarding design and cost
13 parameters. I suggested they work with Swaim & Associates
14 Architects and Barker Morrissey Contracting to get a
15 better idea and so forth.

16 Is that how you recall it also, that it was
17 Mr. Huckelberry that suggested you work with World View?

18 MR. KRAUJA: Objection; form.

19 You can go ahead and answer.

20 THE WITNESS: I don't -- our discussions
21 initially were not with Mr. Huckelberry.

22 BY MR. SANDEFUR:

23 Q. They were with Mr. Swaim as you mentioned
24 before?

25 A. Correct.

1 Q. In the next paragraph, it refers to Swaim &
2 Associates as the architect for the project. Was it your
3 understanding in November of 2015 that Swaim & Associates
4 was the architect for the project?

5 A. Well, they were the ones that World View was
6 talking to. I wouldn't say -- I suppose so.

7 Q. In November of 2015, was Barker Morrissey the
8 contractor on the project?

9 A. We were not identified as the contractor at
10 that point.

11 Q. What were you identified as?

12 A. Someone providing estimates if that makes
13 sense.

14 Q. Well, does that make sense?

15 A. Well, I would -- we weren't -- we do this all
16 the time, providing estimates for clients, and we're not
17 always the contractor until we get the contract.

18 Q. All right. I'll show you the next document
19 here.

20 (Deposition Exhibit 2 marked for identification)

21 BY MR. SANDEFUR:

22 Q. Now, these are some e-mails that are dated to
23 November of 2015 and you're cc'd on some of these e-mails.
24 Do you remember this exchange?

25 A. No.

1 Q. Okay. Now, in that same paragraph at number
2 three that we were talking about, it says here, we did
3 discuss how to proceed and overlap certain aspects of the
4 project, but the more appropriate timeline is closer to
5 one year.

6 Is that -- do you know what that's referring
7 to?

8 A. I'm making assumptions. I don't know.

9 Q. Okay. Was it your understanding in November of
10 2015 that it would take about a year to complete this
11 project?

12 A. Sorry. Repeat that.

13 Q. In November of 2015, was it your understanding
14 that it would take about a year to complete this project?

15 A. For the construction only --

16 Q. Well, let's --

17 A. -- or design and construction?

18 Q. Let's say the construction only first.

19 A. Less than a year.

20 Q. And design and construction?

21 A. A year.

22 Q. And that was what you understood in November of
23 2015?

24 A. Yes.

25 Q. Okay. Is that normal for this kind of a

1 **project?**

2 A. I don't know how to answer that, normal. We
3 deal with all -- this was a fast project. In that regard,
4 it was not normal.

5 Q. So you mentioned like the recycling facility
6 and the Euro --

7 A. EuroFresh.

8 Q. EuroFresh and the -- and the Texas Instruments
9 projects. Did those take about a year from design to
10 construction?

11 A. I don't know. I'd have to check.

12 Q. In November of 2015 -- you said that this was a
13 fast project. In November of 2015, did you -- was it your
14 understanding that a one-year timeline was too short for
15 World View?

16 I mean -- I'm sorry. Excuse me. Did you
17 understand that that was too long for World View, that
18 they needed it sooner than one year?

19 A. Could you repeat -- did you ask me when I --

20 Q. In November of 2015, was it your understanding
21 that one year was too long for World View?

22 A. Yes.

23 Q. And how did you --

24 A. Well, again, for construction, yes.

25 Q. And what led you to believe that?

1 A. I believe I first heard that from Phil Swaim.

2 Q. And on the next page here, this one marked
3 4418, there's an e-mail from John Moffatt to Chuck
4 Huckelberry and to Patrick Cavanuagh and it refers to cost
5 estimates. Do you see that there?

6 A. Uh-huh. Down where it says original site?

7 Q. Yeah.

8 A. Uh-huh.

9 Q. Did Barker Morrissey provide those numbers?

10 A. I assume we did, but I would have to compare
11 it.

12 Q. Below that there's another e-mail that you're
13 cc'd on, so is it safe to -- I mean, do you recall -- that
14 first e-mail, the one with the cost estimates, do you
15 remember seeing that in November of 2015?

16 A. No.

17 Q. Okay. Did you reply to this e-mail, this one
18 that you're cc'd on here?

19 MR. KRAUJA: Objection; form.

20 Go ahead and answer.

21 THE WITNESS: I don't know, but I doubt it.

22 MR. SANDEFUR: Okay. Let's move on to the next
23 document then.

24 (Deposition Exhibit 3 marked for identification)

25 ///

1 BY MR. SANDEFUR:

2 Q. This is an e-mail that's dated November 17th,
3 2015, from you to John Moffatt and Phil Swaim. Did you
4 write this e-mail?

5 A. I assume I did.

6 Q. And it says here, not feeling too good about
7 our chances.

8 What did you mean by that?

9 A. I don't know. I don't know.

10 Q. Do you know who you meant by our, who you were
11 referring to there?

12 MR. KRAUJA: Objection; form.

13 Go ahead and answer.

14 THE WITNESS: The team, Phil Swaim, Barker.

15 BY MR. SANDEFUR:

16 Q. But you don't know what you meant by our
17 chances?

18 A. I'd be making an assumption. I'd have to look
19 at the context more.

20 Q. Now, when you say our team, that team, it was
21 Phil Swaim and Barker and John Moffatt also?

22 MR. KRAUJA: Objection; form.

23 Go ahead and answer.

24 THE WITNESS: Well, the group I should say.

25 ///

1 BY MR. SANDEFUR:

2 Q. And who did that group consist of?

3 A. Well, I'm -- I'm -- when I'm -- when I refer to
4 this, I'm talking about more in the context of having
5 World View stay here.

6 Q. And so in November of 2015, this group was
7 trying to see to it that World View would stay in the
8 county?

9 A. Well, we were providing estimates. I assumed
10 the others were doing just what he said.

11 Q. Okay. And this group that was trying to keep
12 the county together -- or, I mean, keep World View in the
13 county, would it be fair to say that Barker Morrissey and
14 Swaim and the county were all engaged together on that
15 single project?

16 A. We were -- I -- I would not -- I don't know
17 that I would say that.

18 Q. Okay. So what did you mean when you said that
19 you were trying to keep World View here?

20 A. Well, I've been in Tucson all my life. I
21 wanted to see the economic impact of World View as a
22 positive impact to stay here and not move away.

23 Q. And that was -- and you felt that way in late
24 2015?

25 A. Felt which way?

1 Q. That you wanted World View to stay in the
2 county for economic reasons.

3 A. Yes.

4 Q. Okay. So is it the case that in November of
5 2015, you were participating with Swaim and the county in
6 trying to see to it that World View would stay in the
7 county?

8 MR. FLAGG: Form.

9 THE WITNESS: We were providing estimates. We
10 were just doing whatever we could on the estimate side and
11 the schedule side to help in any way we could.

12 BY MR. SANDEFUR:

13 Q. When you say we were trying to do that, you
14 mean Barker, the company?

15 A. Yes.

16 Q. Okay. And you were providing estimates to
17 World View and the county; is that right?

18 A. It was to -- when we provided the estimates, it
19 would be to everybody.

20 Q. So who does everybody --

21 A. No, that -- that would not be correct. I say
22 everybody. It would be Phil Swaim and -- I'm not certain,
23 but I would think that we copied the county on almost all,
24 if not all, the estimates.

25 Q. Let's move on to the next document here.

1 MR. FLAGG: Form.

2 THE WITNESS: Yes.

3 BY MR. SANDEFUR:

4 Q. So it was only in the last week of 2015 that
5 you felt optimistic that Barker would be the contractor on
6 the project?

7 A. No.

8 Q. When did you feel optimistic?

9 A. If the project moved forward, I felt optimistic
10 in November.

11 Q. And why was that?

12 A. Because we put forth a lot of effort, provided
13 a lot of information.

14 Q. Would it have been possible for the county in
15 January of 2016 to have chosen a different contractor?

16 MR. FLAGG: Form and foundation.

17 MR. KRAUJA: Objection; form.

18 Go ahead and answer.

19 THE WITNESS: I assume so.

20 BY MR. SANDEFUR:

21 Q. With the work that you had done and everything
22 prior to that point, if the county had chosen a different
23 contractor, do you have any idea what would have happened
24 at that point? What I mean by that is, would the new
25 contractor have to come in and redo all the work you had

1 done already?

2 A. Yes.

3 Q. Did you ever --

4 A. For the largest part, yes.

5 Q. Did you ever consider what Barker might do in
6 the event that it was not selected for this project?

7 A. No.

8 Q. If another contractor had been hired in January
9 of 2016, do you think you might have sued the county over
10 that?

11 A. No.

12 Q. Do you know if any other contractor was asked
13 to do any pre-contract work on this project?

14 A. I'm not aware of any.

15 Q. This looks like a big document, but we're only
16 going to look at a little bit of it, so --

17 (Deposition Exhibit 13 marked for identification)

18 BY MR. SANDEFUR:

19 Q. Is this the contract that Barker signed with
20 the county?

21 MR. KRAUJA: Objection; form.

22 Go ahead and answer.

23 THE WITNESS: It appears so.

24 BY MR. SANDEFUR:

25 Q. Now, if you'll flip forward to page 3573. I'll

1 show it to you, but it looks like every other page of the
2 contract. You see there's these whereas, whereas, whereas
3 there. Do you see that?

4 A. Yes.

5 Q. The third whereas down there -- I'm sorry, the
6 fourth whereas down there, it says, whereas due to CMAR's
7 past experience and knowledge specific to this project, it
8 was determined under the emergency procurement provisions,
9 et cetera, that competitive procurement would be contrary
10 to the county's interests.

11 Do you know what that means?

12 MR. FLAGG: Foundation.

13 MR. KRAUJA: Objection; form.

14 Go ahead and answer.

15 THE WITNESS: I believe so.

16 BY MR. SANDEFUR:

17 Q. What do you understand that to mean?

18 A. That it would not have been in their interest
19 to hire another -- or try to procure another contractor.

20 Q. And do you know why?

21 MR. FLAGG: Foundation.

22 THE WITNESS: Time primarily.

23 BY MR. SANDEFUR:

24 Q. Do you think that's referring to what I said
25 earlier about how, if they had gone with another

1 contractor, they would kind of be back at the drawing
2 board?

3 MR. FLAGG: Form and foundation.

4 THE WITNESS: Yes.

5 BY MR. SANDEFUR:

6 Q. Was it your understanding before January of
7 2016 that the county was of the view that it would be
8 contrary to the county's interests to open this up to
9 competitive bidding?

10 MR. FLAGG: Form and foundation.

11 MR. KRAUJA: Objection; form.

12 Go ahead and answer.

13 THE WITNESS: Was it my understanding?

14 BY MR. SANDEFUR:

15 Q. Yeah.

16 A. Yes.

17 Q. Was Barker Morrissey paid after January 2016
18 for the pre-contract work that it did?

19 A. No.

20 (Deposition Exhibit 14 marked for identification)

21 BY MR. SANDEFUR:

22 Q. Do you know what this document is?

23 A. Yes.

24 Q. What is it?

25 A. It is a report from our -- our software, our

1 would be involved in pre-construction services?

2 A. Correct.

3 Q. We have a lot of numbers here. 13 I think was
4 a copy of the contract and -- well, I think it was page
5 3573 that Mr. Sandefur asked you about. So the amount
6 stated on this contract at the top, do you see that,
7 \$101,475?

8 A. Yes.

9 Q. Your understanding was that number represents?

10 A. What does it represent?

11 Q. Yes.

12 A. Pre-construction services, scheduling,
13 estimating, potentially -- no, no, we couldn't really have
14 done that. I was going to say some procurement, but not
15 really. It was -- it was value engineering, estimating
16 and scheduling.

17 Q. What do you mean by value engineering?

18 A. Working with -- internally and with consultants
19 on ways to do something that is less expensive but still
20 receive the same benefits, the same value.

21 Q. So is it fair to say in a construction manager
22 at risk project you work during the design phase with both
23 the owner and the designer in part to try to find ways to
24 save costs?

25 A. Yes.

1 Q. Obviously this project costs a lot more than
2 \$101,475 to build, so, you know a contract for
3 pre-construction services, how did it work from there in
4 terms of your relationship with Pima County?

5 Let me withdraw that question. I'm not asking
6 a very good question here.

7 What I'm trying to get at is, you start with
8 this contract for pre-construction services, and then how
9 did that move forward into construction of the actual
10 project?

11 A. This particular project, we had -- we started
12 off with a much -- we had -- we had the budget. We knew
13 what the budget was for the most part, although it seemed
14 to me, as I recall, it changed a little bit, but we
15 started off with small amounts -- smaller amounts than the
16 original contract. And in order to get us started on the
17 project so we can get it done in the timeframe that they
18 were requiring, we had several guaranteed maximum prices
19 on this project. One of the first was the preparation of
20 the soil and then the metal building and concrete. Those
21 were the big ones that we started off with.

22 Q. So you provide different prices for different
23 phases of the construction?

24 A. With the entire budget in mind, yeah.

25 Q. Okay. And, by the way, do you know as you sit

1 here today whether the project was -- came in on budget,
2 under budget, over budget?

3 A. Under budget.

4 Q. Under budget? Okay.

5 Earlier on you -- I think you were very
6 specific when you described what you meant by the term bid
7 versus an estimate. What in your mind is a bid?

8 A. As you mentioned earlier, design/bid/build,
9 it's with full documents and you're competing with another
10 contractor based on those full design documents.

11 Q. And are you competing based on price or based
12 on some other factor?

13 A. It could be one or both.

14 Q. It just depends on the project?

15 A. Yes.

16 Q. You talked about three other projects that
17 you'd done, I think EuroFresh, Texas Instruments and
18 another one that I don't remember, and I think you said
19 one or more of those were metal buildings. Is that right?

20 A. Correct. Two of them were.

21 Q. Okay.

22 A. Multiple metal buildings at EuroFresh and one
23 at the recycling facility.

24 Q. And is the World View building also a metal
25 building?

1 A. Yes.

2 Q. So at the time that you're involved in
3 discussions with Pima County and with Swaim, did your
4 company have experience building metal buildings?

5 A. Yes.

6 Q. Okay. And is that a prefabricated structure?
7 How does that work?

8 A. That's a pre-engineered metal structure that
9 is -- the components are prefabricated and assembled at
10 the site.

11 Q. Okay. So when you're doing a pre-engineered
12 metal structure, is there lead time that's required to get
13 the metal engineered and fabricated before it comes out to
14 the site?

15 A. Yes.

16 Q. So is that one of the reasons to involve a
17 contractor like Barker Morrissey in a project like this
18 earlier on versus some more standard design/bid/build
19 method?

20 A. Yes, absolutely.

21 Q. And do you know how long or about how long the
22 lead time would be for a project like this?

23 A. So it was -- my recollection is it was six
24 weeks prior -- or I should say six weeks after award to
25 get the shop drawings, and then the shop drawings would be

1 a two-week review or so, and then the metal building would
2 be -- it was eight to 12 weeks is my recollection.

3 Q. So that process started right away after the
4 board of supervisor's award?

5 A. Yes.

6 Q. And at that time is there also other design and
7 pre-construction work going on with respect to other
8 facets of the project?

9 A. Yes.

10 Q. There's also a launch pad associated with this
11 project?

12 A. Yes.

13 Q. And what does the launch pad -- what does the
14 launch pad consist of to your understanding?

15 A. You mean what is it built --

16 Q. Yes.

17 A. Concrete is the primary ingredient. There
18 wasn't much else.

19 Q. Basically just a big concrete slab?

20 A. Yes.

21 Q. In terms of the complexity of this project, how
22 would you compare the launch pad with the actual building
23 itself? Was the launch pad a complicated aspect of the
24 project construction-wise?

25 A. I -- I don't know -- the complication in the

1 for the project would be.

2 A. Yes.

3 Q. What was that understanding?

4 A. The end of 2016 to be occupying the building.

5 Q. Got it. Okay.

6 So that's obviously an overall from where we
7 are now in November of 2015 to November 2016. That's when
8 you've got to get the job done?

9 A. Yes.

10 Q. Okay. So based on your experience building a
11 structure or a project of this type of -- of this scale,
12 when you find out in November of 2015 that you're looking
13 at about a year from where you're at in November of '15 to
14 the building being complete, is that a tight timeframe,
15 normal? You know, how does that compare with other types
16 of projects of this scale?

17 A. It was a tight timeframe. It was an
18 aggressive -- it -- it was an aggressive schedule even
19 with this procurement method.

20 MR. FLAGG: All right. That's all I have.

21 MR. KRAUJA: I don't have any questions. We
22 would like the witness to read and sign.

23 MR. SANDEFUR: I do have just a couple little
24 follow-ups to that.

25 ///

Exhibit 9

Excerpts from Deposition of Phil Swaim

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

RICHARD RODGERS; SHELBY)	
MAGNUSON-HAWKINS; and DAVID)	
PRESTON,)	
)	
Plaintiffs,)	
)	
v.)	No. C20161761
)	
CHARLES H. HUCKELBERRY, in his)	
official capacity as County)	
Administrator of Pima County;)	
SHARON BRONSON, RAY CARROLL,)	
RICHARD ELIAS, ALLYSON MILLER,)	
and RAMON VALADEZ, in their)	
official capacities as members)	
of the Pima County Board of)	
Supervisors; PIMA COUNTY, a)	
political subdivision of the)	
State of Arizona,)	
)	
Defendants.)	
_____)	

DEPOSITION OF PHIL SWAIM

Tucson, Arizona
April 9, 2018
12:59 p.m.

REPORTED BY:
Thomas A. Woppert, RPR
AZ CCR No. 50476

KATHY FINK & ASSOCIATES
2819 East 22nd Street
Tucson, Arizona 85713
(520)624-8644

1 Q. Would you say that you've done more than 10
2 projects for the county?

3 A. In what time -- I mean, since 1985?

4 Q. Certainly.

5 A. Probably.

6 Q. How about 10 projects since 1999?

7 A. I don't know that we have done that many
8 certainly.

9 Q. Okay. Is the World View project unusual in any
10 way?

11 MR. FLAGG: Form.

12 THE WITNESS: Every project's different.

13 BY MR. SANDEFUR:

14 Q. Is it unusual enough that you would say it
15 really stands out compared to the other projects you've
16 worked on?

17 A. Not necessarily.

18 Q. Have you gone through a competitive bidding
19 process on the other projects that you've worked on with
20 the county?

21 MR. FLAGG: Form.

22 THE WITNESS: Architects -- as architects, we
23 don't bid on projects. It's a qualifications-based
24 selection process.

25 ///

1 BY MR. SANDEFUR:

2 Q. Can you tell me how that process works?

3 A. Typically for public projects, there is a
4 request for proposal. You submit -- you respond to
5 questions. They short list, they interview and select
6 based upon qualifications.

7 Q. And did that happen in this case?

8 A. It did not.

9 Q. And how long would you say that process
10 normally takes from start to finish?

11 A. Probably anywhere from -- typically three to
12 four months.

13 Q. When you receive one of these notices in the
14 normal case and you want to put in a proposal, how long
15 would you say it takes normally speaking, and I know this
16 is a rough estimate, to prepare one of those proposals?

17 A. There's a range of -- but anywhere typically --
18 a month to two months is what they typically give to -- to
19 do that.

20 Q. And what kind of information would you need to
21 prepare one of those proposals?

22 A. It depends upon the questions they ask.

23 Q. So what kind of questions would you be looking
24 for in one of those proposals?

25 A. Typically it's about our experience, process,

1 if there's -- many times they ask specific questions about
2 our approach to the project. It would need some prior
3 knowledge or some -- some investigation on.

4 Q. What kind of information did you get about the
5 World View project in the summer of 2015?

6 A. Does August qualify --

7 Q. Yes.

8 A. -- as summer?

9 Q. Yes.

10 A. Initially it just started with a -- with a
11 phone call, and then we had meetings to be able to -- to
12 learn about the project.

13 Q. And who was that phone call from?

14 A. Mike Hammond.

15 Q. Who is that?

16 A. Mike is a real estate broker, man of the year
17 in Tucson.

18 Q. And do you know Mr. Huckelberry?

19 A. I do.

20 Q. How long have you known him?

21 A. I don't know for sure. Probably from sometime
22 in the '90s.

23 Q. Would you say that you know him very well?

24 A. Sure.

25 Q. He told us when we talked to him last week that

1 he knew your father. Would you say that your family is
2 close to him?

3 A. No, not the family.

4 Q. Do you know John Moffatt?

5 A. I do.

6 Q. How long have you known Mr. Moffatt?

7 A. Similar timeframe. I would assume maybe from
8 the '90s.

9 Q. Do you work with Mr. Moffatt often?

10 A. Not often, no.

11 Q. Have you worked with Mr. Huckelberry or
12 Mr. Moffatt on projects prior to the World View project?

13 A. We don't typically work directly -- we don't
14 work directly with them. We would work with their
15 facilities department.

16 Q. So you mean that if you were working on a
17 typical county project that you would get a call from
18 their facilities department rather than Mr. Huckelberry or
19 Mr. Moffatt?

20 A. That would typically be the case.

21 Q. And then going through the process, I assume
22 you would have some kind of an in-person meeting, right,
23 normally?

24 A. Yes.

25 Q. And those kinds of in-person meetings would

1 normally be with the facilities department people and not
2 with Mr. Huckelberry or Mr. Moffatt?

3 A. Occasionally they would be involved and be able
4 to give some vision, but typically the facilities would
5 lead the -- lead that effort.

6 Q. One of the things that we've been trying to do
7 in these depositions is try and figure out exactly what
8 happened when and try and put together the timeline, and
9 so as a result, some of the questions that I'll probably
10 ask you will probably be kind of redundant and might seem
11 a little tedious, but the reason for that is because we
12 want to make sure we know exactly what occurred at what
13 time.

14 So you mentioned that Mike Hammond called you
15 about this project. Was that the first time you had ever
16 heard of the World View project?

17 A. Yes.

18 Q. Did he use the term Project Curvature in that
19 conversation?

20 A. I don't know if he used that in that initial
21 conversation or not.

22 Q. Had you heard that term before August of 2015?

23 A. No.

24 Q. Had you ever heard of World View prior to
25 August 2015?

1 A. No.

2 Q. So when Mr. Hammond called you, what project
3 was it that he was -- wanted to talk to you about?

4 A. He said there was a project -- or there was
5 a -- actually a company that was being recruited to leave
6 Tucson.

7 Q. To leave Tucson, you said?

8 A. And wanted some assistance.

9 Q. To leave Tucson?

10 A. To be able to keep them here.

11 Q. I see. So he wanted to try and prevent them
12 from leaving Tucson and was calling you for thoughts on
13 that?

14 A. I believe that was his goal, yes.

15 Q. Okay. And when we talked to Mr. Huckelberry,
16 he couldn't recall whether or not you were already working
17 with World View prior to August of 2015, so I wanted to
18 make sure. You're saying that you were not working with
19 World View prior to August of 2015?

20 A. Correct.

21 Q. Okay. Do you remember what the original plan
22 was that Mr. Hammond wanted to talk with you about?

23 A. He said that they wanted some -- some
24 assistance to help describe to World View what might be
25 possible here in Tucson to compete with the other

1 options -- offers that they were getting.

2 Q. And did he talk about renovating some hangars
3 at the Tucson airport?

4 A. The initial conversation did not talk -- he
5 said there were a variety of things that we'd be able to
6 talk about, but it was not real specific in that call.

7 Q. So can you remember when you first heard the
8 term Project Curvature?

9 A. It was sometime that fall. It may have been in
10 earlier meetings. Certainly people talked that this was a
11 confidential process.

12 Q. Now, in that phone call with Mr. Hammond, did
13 he mention to you when World View would need the project
14 to be completed?

15 A. He did not.

16 Q. Okay. And do you know why it was that he
17 contacted you?

18 A. We know each other. I -- I don't know
19 specifically. We have, you know, some good relevant
20 experience that might be helpful for this one.

21 Q. Did he mention that your name had been
22 recommended by anybody?

23 A. He did not specifically, no.

24 Q. So I'm going to show you some documents here.

25 (Deposition Exhibit 1 marked for identification)

1 **a manufacturing facility for balloons?**

2 A. Yes.

3 Q. Do you know when it was that you first became
4 **aware that it was a facility for manufacturing balloons?**

5 A. Mike Hammond mentioned something about that in
6 the first phone call, but it was really probably the first
7 meeting where we talked about that in detail.

8 Q. And it says -- in that same paragraph I was
9 pointing to, it says -- not only it says, I suggested they
10 work with Swaim & Associates, but also it says, I
11 suggested that they work with Barker Morrissey.

12 Do you know whether that's true, whether
13 **Mr. Huckelberry recommended that World View work with**
14 **Barker Morrissey?**

15 MR. FLAGG: Form.

16 THE WITNESS: I do not.

17 BY MR. SANDEFUR:

18 Q. Do you know how was it that Barker Morrissey
19 **first got involved in this project?**

20 A. We needed assistance to be able to help
21 understand potential construction cost, and so a few
22 different contractors were suggested that might have the
23 capability to assist and Barker was mentioned there.

24 Q. And you say a few different contractors were
25 **suggested. Do you know who suggested that?**

1 A. I do not recall who was in the meeting.

2 Q. And you're talking about in this first phone
3 call?

4 A. No. That was not mentioned during that phone
5 call.

6 Q. Okay. So when were the other contractors
7 suggested?

8 A. At some point during a meeting or two later
9 than that, from that call.

10 Q. And do you remember what other contractors were
11 suggested?

12 A. BFL was one contractor that I recall. I'm not
13 sure of others at that point.

14 Q. Okay. Do you remember ever being consulted
15 regarding renovating hangars at Tucson airport?

16 A. No.

17 Q. And I understand your firm worked some time ago
18 on a project for the University of Arizona involving
19 medical laboratories. Is that right?

20 A. We've done a variety of things for U of A.
21 We've done some medical lab work there.

22 Q. Do you remember when that was?

23 A. I do not.

24 Q. Would you say that the medical labs were in any
25 way similar to the balloon manufacturing facility?

1 Q. Do you know whether any of them have experience
2 that would be similar to building a balloon launch pad?

3 A. No, I would -- no, I would say no.

4 Q. Have you ever considered that question before?

5 A. No.

6 Q. Was there ever any discussion on that phone
7 call that you mentioned or afterwards when you were asked
8 to recommend any other architects for the project?

9 A. I was not.

10 Q. Were you ever asked whether there were other
11 architects that had relevant experience for projects like
12 this?

13 A. I was not.

14 Q. In this document we looked at here, it refers
15 to Swaim in the next paragraph as World View's project
16 architect. Was Swaim World View's project architect in
17 November of 2015?

18 A. No. We were not under contract.

19 Q. Were you under contract to the county?

20 A. No.

21 Q. Do you know whether Barker Morrissey was the
22 project contractor in November 2015?

23 A. They were not. There were no contracts.

24 Q. Okay. I'm going to show you this document
25 here.

1 A. Architect in training. I think he was a couple
2 years out of school, not registered.

3 Q. Okay. And that person does the drawings, the
4 elevations, the measurements, that sort of thing?

5 A. Correct.

6 Q. And how long would you say it would take to
7 prepare the drawings that we're looking at here?

8 A. I don't know for sure. I'd have to look and
9 see what -- the specific date. To do something
10 conceptual, I mean, I don't know in terms of numbers of
11 hours or days. My guess is we probably spent a week or,
12 you know, a few days or something like that to be able to
13 come up with these initially.

14 Q. So --

15 A. I don't know for sure.

16 Q. So maybe half a week?

17 A. Maybe, yeah. Jason's pretty quick.

18 Q. When you do those drawings and it takes half a
19 week or whatever, do you normally charge a customer for
20 doing that?

21 A. No, not necessarily.

22 Q. When you say not necessarily, do you mean
23 sometimes you do and sometimes you don't?

24 A. If we already have a contract, sure, we'll
25 charge them, but this was done more as a community service

1 than a -- than as a -- certainly we didn't have a
2 contract.

3 Q. Okay. But when it's not done as a community
4 service, like if I wanted you to build me a building and I
5 came to you and said, here's the size building I want, and
6 then you had Jason go and spend a half a week drawing
7 those out, would you charge me for that?

8 A. Again, not necessarily. There are times that
9 we do some early work with -- with potential clients or
10 with others that we know need assistance, Salvation Army.
11 I mean, there's a variety of people and things around the
12 community that we do to be able to -- that we do pro bono
13 to be able to assist.

14 Q. But that's kind of unusual, isn't it?

15 A. No.

16 Q. So most of your work is done for free?

17 A. No.

18 Q. So do you normally charge people for your work?

19 A. But early on, it's not unusual. We don't
20 typically advertise. We -- we -- we assist in the
21 community, but no, it's -- eventually yes, the goal is to
22 be able to charge for work.

23 Q. Okay. So in a case where it's not a community
24 project, like I'm just Tim the lawyer and I need a law
25 office, I would come to you and I'd say, I have a site,

1 A. Correct.

2 Q. Was it his full-time job?

3 A. Oh, no.

4 Q. Did he work late hours to do this or was this
5 his regular -- during his regular working day?

6 A. Regular working day.

7 Q. And why did you do it for no money?

8 A. Community service.

9 Q. And what do you mean by community service?

10 A. It is basically economic development. Tucson
11 is -- as we're trying to make a transition from an economy
12 based upon growth to an economy based upon business, it's
13 imperative that we find companies to be able to stay in
14 Tucson. And after losing some of Raytheon's growth to
15 Alabama, I think the community realized we couldn't afford
16 to continue to lose -- lose jobs, especially in an
17 industry like aerospace that's really something that's
18 very important to the community.

19 Q. And that commitment to the community was -- I
20 assume other people were aware of your concerns in this
21 regard. Is that why Mr. Hammond called you about this
22 project in August of 2015?

23 A. I'm not sure exactly why Mike would call me
24 except that we're the -- probably the largest
25 architectural firm in town and have the capability to be

1 able to -- to assist.

2 Q. Had you ever worked with Mr. Hammond on any
3 projects before this?

4 A. Have not.

5 Q. Did you know him before this?

6 A. I do. I have.

7 Q. Now, in looking at these documents, it looks
8 like Barker Morrissey did a lot of revisions of the
9 estimates of what it would cost to build this thing and
10 all that. And each time they did a revision or an update
11 in the course of the project planning, did they have to
12 come to you for further drawings and specifications?

13 A. Not necessarily, but we did continue to -- to
14 update the -- the document as something that reflected the
15 budget or World View's needs.

16 Q. And -- well, did you do an unusual amount of
17 revision of the project during the late part of 2015 or
18 was it pretty ordinary?

19 A. Pretty ordinary.

20 Q. How many revisions and changes and things would
21 you say that was?

22 A. I really don't know. I have no idea.

23 Q. Was it extensive work?

24 A. Not necessarily, no.

25 Q. When you say not necessarily, do you mean that

1 Q. There wasn't another architect involved in this
2 case; right?

3 A. Correct.

4 Q. Okay. So was it your understanding that if the
5 project were green lighted that Swaim would be the
6 architect on this project?

7 A. No, not necessarily.

8 Q. Would it have been possible for another
9 architect to take over the project in January of 2016?

10 A. Not with the schedule that was put forward at
11 that point.

12 Q. What about in November of 2015?

13 A. Possibly. They still would have had to start
14 over.

15 Q. So when you say the schedule that was in place
16 by that point, you're talking about what?

17 A. There was a requirement that came on that fall
18 that there would be one year to be able to design and
19 build the building.

20 Q. So one year meaning have it finished by
21 November of 2016?

22 A. I can't recall exactly when the November
23 date -- it kind of depended upon when it would start.

24 Q. You say that another architect had -- if
25 another architect had taken over the project in late 2015

1 that they would have had to start over. You mean that
2 they couldn't have used your plans; right?

3 A. Correct.

4 Q. Okay. What about another contractor? Could
5 another contractor other than Barker Morrissey have used
6 your plans to complete the project?

7 A. They wouldn't have been able to use our plans,
8 no.

9 Q. Why not?

10 A. At this point those were our own documents.

11 Q. So if you design a project and you're working
12 with another -- with a contractor to come up with
13 estimates, and then the customer says, well, I don't like
14 that contractor, I want you to go with a different
15 contractor, then you have to restart all the drawings?

16 A. No.

17 Q. So that new contractor could use the existing
18 plans; right?

19 A. That could be -- that could work.

20 Q. So why could it not work in this case?

21 A. The contractor wouldn't have all the prior
22 knowledge of the -- of this very specific project.

23 Q. I guess I don't understand really how
24 architecture and contracting interact because I would
25 think that those -- that information would be in the

1 **plans. Is it not?**

2 A. It would take time to get knowledgeable. Could
3 any lawyer come in and take over your case and start from
4 day one and -- and not miss a beat? It would take him a
5 while to be able to get caught up and start from the --
6 and get going again.

7 Q. A good point although an ironic question to ask
8 under the circumstances since in fact I did take this case
9 over in midstream from another attorney.

10 A. And it has taken a while to get caught up?

11 Q. Yes.

12 A. Yes, it has. That's right.

13 Q. So that's what you're referring to? You say
14 that it would have been difficult, say, in November of
15 2015 for a contracting firm other than Barker Morrissey to
16 come in and get up to speed on your plans in time for the
17 project to be finished? Is that what you're saying?

18 A. Not just on our plans but all the information
19 that was -- that we -- that we learned from World View and
20 the ACA and everybody about -- about the project.

21 Q. Sure.

22 Was it your understanding in working on this
23 project that Barker Morrissey would be the contractor on
24 the project if it were given the green light by the
25 county?

1 A. No.

2 Q. So it seems a little strange to me that you're
3 saying that you worked on this project from August of 2015
4 until January of 2016 doing all these plans and revisions
5 and estimates with Barker Morrissey on board, having all
6 these meetings and things and both of you doing it for
7 free knowing that nobody else could step in and take over
8 the project, but at the same time, you're saying it was
9 not your understanding that Swaim would be the architect
10 if the project were given the green light and it was not
11 your understanding that Barker Morrissey would be the
12 contractor if the project were given the green light?

13 A. My recollection is we worked on the project
14 from August through sometime in early October. There was
15 a deadline to provide information for World View's board
16 of directors meeting where they were comparing competing
17 offers, so we stopped sometime in October; didn't know
18 when the project would start or what the competition would
19 lead to from there, so --

20 Q. Were you aware of the possibility that the
21 county might green light the project and choose you as the
22 architect but not choose Barker Morrissey as the
23 contractor?

24 A. I was not aware of that sort of thing.

25 Q. So you assumed then that if the project were

1 number three there at the bottom. And it says, during our
2 discussion at Phil Swaim's office, it appears that nine
3 months is cutting it too close without having a good set
4 of drawings and specifications in hand.

5 Do you know what that's referring to?

6 A. As I recall, they were trying to see if they
7 could -- if the building could be designed and built in
8 nine months initially.

9 Q. And did you think that was unrealistic?

10 A. I said that would be difficult.

11 Q. And it says here, the appropriate timeline is
12 closer to one year. Did you think that was more
13 realistic?

14 A. An additional three months would be a big help.

15 Q. And was that your suggestion then that a year
16 would be more realistic than nine months?

17 A. It certainly looks like that was the case, yes.

18 Q. And this project couldn't be completed without
19 drawings and specifications; right?

20 A. Correct.

21 Q. Did you provide the drawings and specifications
22 that are being mentioned in this e-mail?

23 A. Not until we were under contract.

24 Q. You mean not until January of 2016?

25 A. That's when we -- yes, that's when we started

1 under contract.

2 Q. But you had drawings in place already; right?

3 A. Just the conceptual drawings.

4 Q. So the drawings we looked at earlier that were
5 part of that estimate here, these are just conceptual
6 drawings?

7 A. Yes.

8 Q. What's the difference between a conceptual
9 drawing and the drawings we're referring to?

10 A. Very simplistic. You know, we didn't have
11 engineers on board. A limited amount of detail or timing
12 had been put into that.

13 Q. So when I think of a conceptual drawing, I
14 think of something like, you know, an elevation of what a
15 house would look like, but you're saying that a conceptual
16 drawing very much resembles a blueprint?

17 MR. FLAGG: Form.

18 BY MR. SANDEFUR:

19 Q. If that question is wrongly phrased, please say
20 so.

21 A. Yes.

22 Q. Okay. Why is it wrongly phrased?

23 A. We don't use blueprints anymore.

24 Q. Okay. So --

25 A. A conceptual drawing can be any type of

1 A. It is.

2 Q. And it says here -- on this first page, it
3 says -- the third whereas, it says, whereas, due to
4 consultant's past experience and knowledge specific to
5 this project, it was determined under the emergency
6 procurement provisions of blah, blah, blah.

7 What do you understand that to mean?

8 A. That -- that based upon our knowledge of the
9 project and the experience with the client that we were
10 probably the only ones who could possibly get the job done
11 in the time that they agreed to with World View, World
12 View required.

13 Q. So by this time then, Swaim was so involved in
14 the project that the county thought it would be a bad idea
15 to go with anyone other than Swaim?

16 A. I would assume that was probably -- yeah. I
17 wasn't -- wasn't in their mind, but that's a real logical
18 thought.

19 Q. Have you been paid since January 2016 for any
20 of the work done prior to January 2016?

21 A. No.

22 Q. Are you going to be?

23 A. No.

24 Q. Did the project get completed?

25 A. It did.

1 Q. And that's in addition to yourself?

2 A. Yes.

3 Q. Did you have to go out and remeasure everything
4 or -- I mean, you can't have been starting from scratch;
5 right?

6 A. Correct. No, we were not starting from scratch
7 at all. We had the design organization that World View
8 liked, so, you know, we weren't starting over from that
9 standpoint at all.

10 Q. Okay. So how much longer would you say it took
11 from January 19th until you had the finished drawings?

12 A. I don't have the schedule in front of me, but
13 it was several months. This project happened so fast that
14 we -- we did it in phases. We put the bid package out for
15 the steel three weeks after the contract started, which is
16 the first time I've ever seen that done in a career. This
17 is probably one of the fastest project schedules I've ever
18 seen.

19 Q. And did you put out any other bids for
20 materials?

21 A. Well, it was Barker that actually put the bids
22 out, but we worked with them to create -- to provide the
23 drawings for those bid packages. There were a whole
24 series of phase bids along the way. The steel package was
25 one. They did the elevator in another. They did

1 A. No, not -- not like this one at all.

2 Q. What makes this project different?

3 A. Well, certainly it was -- I think it was one of
4 the first times, at least that I was aware of, where --
5 with -- with really the complete team effort of city,
6 county, Rio Nuevo, state and everybody engaged together in
7 the private world to be able to say we need to be able to
8 somehow save this company and keep them in Tucson.

9 Q. One of the documents you were shown which is
10 marked Exhibit 4 is the January 19, 2016, board of
11 supervisors memorandum. If I could direct you to page
12 seven of the document. At the bottom right, it's marked
13 pimacounty39.

14 A. Uh-huh.

15 Q. The first paragraph -- and I'm -- if you don't
16 know the background of this, that's fine. I just -- I
17 want to clarify something.

18 The first paragraph under selection of project
19 architect and contractor, I think it's the third sentence
20 of that paragraph, says, Swaim Associates is the firm that
21 provided architectural services for the integrated medical
22 facilities at the University of Arizona, which included
23 complex laboratory, aerospace and science facilities.

24 Were you involved in the design of the
25 integrated medical facilities for the University of

1 **Arizona?**

2 A. Yes. That's the HSIB project that's now under
3 construction.

4 Q. Okay. And the reason I'm asking this question
5 is I think Mr. Sandefur referred to design of some lab
6 space, and I think that this is what he was referring to.
7 Could you describe based on your knowledge what that
8 project entailed?

9 A. It's a 120 million dollar project of actually
10 combining -- creating a teaching space for college of
11 medicine, nursing, public health, pharmacy, and instead of
12 everybody learning on their own, actually bringing people
13 together to be able to train and -- and share training
14 facilities collectively as they do in the real world.

15 Q. And were you directly involved with that
16 project?

17 A. I have been involved. One of my partners
18 was -- has been more involved than I have.

19 Q. Okay.

20 MS. NASSEN: I have just one question.

21

22 E X A M I N A T I O N

23

24 BY MS. NASSEN:

25 Q. I wanted to follow up on something that you

Exhibit 10

Memorandum from C.H. Huckelberry to T. Burke, 11/2/2015



MEMORANDUM

Date: November 2, 2015

To: Tom Burke, Director
Deputy County Administrator
for Administration

From: C.H. Huckelberry
County Administrator *CH*

Re: **Selection of Swalm and Associates for Possible Architectural Planning and Design Services Associated with World View**

Attached is a copy of a press release and an October 23, 2015 letter I transmitted to World View. World View is considering locations for their new manufacturing facilities, and Pima County is a finalist, along with several locations in Florida. It will be difficult to compete with Florida due to federal funding of repurposing missions associated with the shuttle. Nearly \$40 million has been appropriated to Florida from the federal government for their Space Florida Initiative.

World View is currently located in Pima County, and they are transitioning from a research and prototype facility to a full production facility. World View would employ as many as 500 individuals at an approximate 135,000 square foot manufacturing facility.

In our initial meetings with World View, it is clear they had no structure regarding design and cost parameters for a new manufacturing facility. I suggested they work with Swalm and Associates Architects and Barker Morrissey Contracting to get a better idea of actual costs and cost components of their new manufacturing facility. They have now asked for a proposal to build such a facility at the Aerospace, Defense and Technology Research and Business Park; hence, my October 23 letter. World View is now refining the proposal to reduce the overall cost.

The purpose of this memorandum is two-fold. First, to inquire of you and the Procurement Director the most appropriate method to employ World View's project architect, Swalm and Associates, to complete the necessary design, planning, programming and construction drawings for a new facility if they choose Pima County to locate their headquarters.

Second, we need to review the various financing mechanisms that could be made available to finance this project and enter into a lease/purchase agreement with World View over a 20-year period where we would recover our capital outlay with interest. There are likely a number of financing mechanisms, including Certificates of Participation (COPs). However, it is likely because of their use, the COPs issue would be taxable.

EXHIBIT 20
DATE 4/6/18
WITNESS HUCKELBERRY

Exhibit No. <u>14</u>
Date: <u>3-19-18</u>
Witness <u>Moffatt</u>
Julianne Roesly, CR, RPR

pimacounty001877

Mr. Tom Burke

**Re: Selection of Swalm and Associates for Possible Architectural Planning and Design
Services Associated with World View**

November 2, 2015

Page 2

Please review the financing mechanisms available to the County and ask the Procurement Director to make recommendations regarding a possible contract with Swalm and Associates for World View architectural services.

CHH/anc

Attachments

c: Dr. John Moffatt, Strategic Planning Director

Exhibit 11

World View Project Curvature Questions Response

John Moffatt

From: Brian Barker <brian@barkermorrissey.com>
Sent: Tuesday, November 17, 2015 11:28 AM
To: John Moffatt; 'Phil Swaim'
Cc: Riley Rasmussen
Subject: RE: WV Project Curvature Questions Response

Not feeling too good about our chances.

From: John Moffatt [mailto:John.Moffatt@pima.gov]
Sent: Tuesday, November 17, 2015 11:22
To: Brian Barker <brian@barkermorrissey.com>; 'Phil Swaim' <pswaim@swaimaia.com>
Subject: FW: WV Project Curvature Questions Response

Fyi

From: A Rod [mailto:alexrodriguez4tUSD@yahoo.com]
Sent: Monday, November 16, 2015 5:23 PM
To: John Moffatt
Cc: Maricela Solis; Jane Poynter; Taber MacCallum; Alex Rodriguez
Subject: WV Project Curvature Questions Response

Hi John:

I am sending in the responses to your questions below for Maricela who was out of the office today. Please see the two supporting documents attached as well. You can call me directly at 275.0519 if you have any questions or if I can help you with any aspect of Project Curvature.

1. I had a good meeting with Phil Swaim and Brian Barker yesterday. One of the things we need was discussed at the Monday meeting but I'm not sure anyone on your side had an action item. We need to see the FFE list to understand how much of it will fit into the package Chuck put together once we reduce the building cost.

a. Is that list available or can you please compile it with approximate values and identification as to what can be sourced in Arizona?

Attached.

2. I am compiling the material to send to John Halikowski at ADOT.

a. Do you have any specifications / options that I can provide to him. Is there anything from New Mexico that we can provide so they see the competitive package in more detail than my verbal discussion?

- Full option: 700' diameter concrete circle capable of withstanding the mass of commercial semi-truck traffic, with road to and from the pad for the trucks. Power around the perimeter. Anchor points around the perimeter and at center for tie downs capable of withstanding 20,000lbs force.
- Minimum option: 450' diameter chip seal or other dust-free prepared surface capable of carrying occasional commercial semi-truck traffic. One or two power stations supplied at the edge. Specific tie downs can be provided by user.

b. Is there any ballpark definition of support buildings that would be necessary for the Launch Pad to be used as a "community" resource?

We envision that most people will use it without support buildings. However, a small aircraft hangar with lighting and power would be of great utility, as well as restroom facilities.

EXHIBIT 7
DATE 4/9/18
WITNESS Swaim

3. There was some reaction to the potential timing on the construction. During our discussion at Phil Swaim's office, it appears that 9 months is cutting it too close without having a good set of drawings and specifications in hand. We did discuss how to proceed and overlap certain aspects of the project, but the more appropriate timeline is closer to one year with the possibility to bring that in a little bit but unlikely that we can shorten it by 3 months. Comparing a custom constructed building for your needs to a preexisting building being adapted is difficult.

a. Is there some specific need that we can address by focusing on building some part of the building first to allow you to accomplish that need?

The balloon manufacturing area is the most critical for us.

4. I have told Michael Guymon that he needs to carry the water on getting more out of the state. I don't know how to compare what you got from Florida and the State's offer on an apples and apples basis.

a. Is there something specific that we need to look at to be able to provide a comparable package to World View? See attached comparison with FL. NM is pending. We expect to receive it sometime soon.

We look forward to the Term Sheet and moving forward.

Thank you John!

-Alex Rodriguez
520.275.0519
alexrodriguez@post.harvard.edu

Exhibit 12

Letter from World View to C.H. Huckelberry, 12/23/15



December 23, 2015

Chuck Huckelberry
Pima County Administrator
130 W. Congress Street 10th floor
Tucson, AZ 85701

Dear Chuck,

It is with gratitude, excitement and appreciation that I write to announce and inform you that after an exhaustive and competitive site selection process between Arizona, New Mexico and Florida, World View Enterprises, Inc has elected to call Arizona home and make it the world headquarters for the company. We therefore accept your Project Curvature Offer dated October 23, 2015 given the conditions in this letter derived from our work with the Pima County, Arizona Commerce Authority, Sun Corridor and the municipalities.

In light of on-going discussions and final contract documentation with the Arizona Commerce Authority, Pima County, the City of Tucson, the City of Page Arizona, Coconino County and the Sun Corridor, I am providing this letter to you as a contract point of reference to memorialize and ensure that both World View and all stakeholders have clear understanding of the terms, conditions and contract requirements.

Assumptions, Terms & Conditions for Project Curvature Contract Acceptance

Pima County Proposal:

World View accepts the Pima County proposal with the follow assumptions, contract terms and conditions. The company will move into a new building under lease contract with Pima County to be located at the Pima County Aerospace, Defense and Technology Business and Research Park by approximately November 2016. All launch pad expenditures including land and required improvements, grading, sealing etc. for the 700-foot diameter pad, appropriately spaced from the World View facility, will not be the responsibility of World View and will therefore not be included in the Pima County \$15M building financing package. We agree that Swaim Associates will be the architect and Barker Morrissey the builder. Additionally, we agree to enter into a lease that meet the specified details State of Arizona as described below. World View understands that the operational date for the new facility is as of the effective date of the Arizona Commerce Authority contract thereby qualifying for the tax credit program for 2016 and beyond.

EXHIBIT 21
DATE 12/23/15
WITNESS HUCKELBERRY

Further, World View expects that the Pima County Building Lease Contract will fully qualify for the Arizona Qualified Facility Refundable Tax Credit Program. World View will become qualified upon the effective date of the contract.

City of Tucson:

World View accepts the City of Tucson proposal including that the City of Tucson will work with Pima County and private contractors to provide all required water infrastructure development.

Arizona Commerce Authority Proposal:

World View accepts the Arizona Commerce Authority proposal dated December 9th 2015 with the following assumptions, contract terms and conditions.

A. Launch Pad

The World View Headquarters, as specified during the proposal discussions and negotiation, will require a 700ft Launch Pad to be constructed in conjunction with the new building and to be operational no later than the time of moving into the new building.

It is our understanding that the Arizona Commerce Authority will assure that a Launch Pad construction project is funded in a timely manner in accordance with the overall building schedule to be completed in approximately November of 2016. All Launch Pad costs will be funded separately from the Pima County financing proposal for building construction. While Pima County may be the owner of the Launch Pad, the Arizona Commerce Authority will assure that the launch pad is constructed and paid for. The launch pad is to be a facility for the general use of the Aerospace and Defense community and a business attraction for southern Arizona. As part of World View's building lease, World View will provide for the safe operation of the facility by entities wishing to use it for a variety of compatible purposes on an as-available and operationally safe basis.

B. Arizona Competes Fund

World View understands that the Arizona Commerce Authority will provide milestone payments that include CapEx. World View understands that the operational date for the new facility is as of the effective date of the contract thereby qualifying for the Arizona Competes Fund for 2016 and beyond. World View expects that the Pima County Building Lease Contract will fully qualify for the Arizona Competes Fund.

Sun Corridor, Inc.:

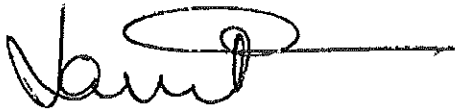
Upon signature and acceptance of the proposed contracts by all parties, Sun Corridor will remain actively engaged so as to ensure contract support and compliance as necessary.

Contract Implementation, Schedule, Timing & Compliance:

World View anticipates being operational and 'fully moved in' to the new corporate headquarters in approximately November 2016. All jurisdictions will assure their terms and conditions are aligned to ensure that World View customer contracts and requirements are fully met. The World View Point of Contact for Contract Implementation will be Maricela Solis and can be reached directly at 520-850-5967 or maricela@worldviewexperience.com.

Finally, our team at World View is grateful to the Pima County, all stakeholders and supporters for helping the company decide to stay in Tucson. We look forward to working with you and our community to make southern and northern Arizona a prosperous globally recognized center for the rapidly growing commercial space industry.

To Your Stratospheric Success,

A handwritten signature in black ink, appearing to read 'Jane Poynter', with a long horizontal line extending to the right.

Jane Poynter
Chief Executive Officer

Exhibit 13
Certificate of Substantial Completion



AIA® Document G704™ – 2000

Certificate of Substantial Completion

PROJECT:

(Name and address)

World View
1805 E. Aerospace Parkway
Tucson, AZ 85719

PROJECT NUMBER: 1518/16011

CONTRACT FOR: General Construction

CONTRACT DATE: 02/17/2016

OWNER: ☐

ARCHITECT: ☐

CONTRACTOR: ☐

FIELD: ☐

OTHER: ☐

TO OWNER:

(Name and address)

Pima County Facilities Management
150 West Congress - 3rd Floor
P.O. Box 791
Tucson, AZ 85719

TO CONTRACTOR:

(Name and address)

Barker Morrissey Contracting, Inc.
2127 E. Speedway Blvd.
Suite 101
Tucson, AZ 85719

PROJECT OR PORTION OF THE PROJECT DESIGNATED FOR PARTIAL OCCUPANCY OR USE SHALL INCLUDE:

Entire Project

The Work performed under this Contract has been reviewed and found, to the Architect's best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated above is the date of issuance established by this Certificate, which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

Warranty

2 Years

Date of Commencement

December 23, 2016

Swaim Associates, Ltd.

ARCHITECT

BY

12/23/2016

DATE OF ISSUANCE

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

Cost estimate of Work that is incomplete or defective: \$500,000.00

The Contractor will complete or correct the Work on the list of items attached hereto within Thirty (30) days from the above date of Substantial Completion.

Barker Morrissey Contracting, Inc.

CONTRACTOR

BY

12/28/2016

DATE

The Owner accepts the Work or designated portion as substantially complete and will assume full possession at 12:00 AM (time) on 12/23/2016 (date).

Pima County Facilities Management

OWNER

BY

12.27.2016

DATE

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows:

(Note: Owner's and Contractor's legal and insurance counsel should determine and review insurance requirements and coverage.)

Owner / World View accepts full responsibility for security, maintenance, utilities, insurance, and damage to the completed Work. Contractor is responsible for security and damage to existing work when completing punch list items.

Exhibit 14
Temporary Certification of Occupancy



www.pima.gov

Building & Site Development

Record: P16BP03605

Valid Through 12/23/2016 to 01/13/2017
Temporary Certificate of Occupancy

This certificate is issued pursuant to the requirements of the International Building Code certifying that at the time of issuance the following structure was in Compliance with the various ordinances regulating building construction or use.

Description: Building envelope and tenant improvement for World View and rev 1: I-Joist calculations and rev 2: metal building and rev 3: deferred stair submittal and rev 4: changes to site, structural, fire protection and mechanical and rev 5: lighting calculations

Building Address: 1805 E AEROSPACE PW TUCSON, AZ

Building Owner: PIMA COUNTY

..

Design occupancy Load: 800

Occupancy Group: B, F1

Construction Type: IIB

Date: 12/23/2016

Yves Khawam, PhD. Chief Building Official

Exhibit 15
Certificate of Occupancy



Building & Site Development

Record #: P16BP03605

Certificate of Occupancy

This certificate is issued pursuant to the requirements of the International Building Code certifying that at the time of issuance the following space was in Compliance with the various ordinances regulating building construction or use.

Description: Building envelope and tenant improvement for World View and rev 1: I-Joist calculations and rev 2: metal building and rev 3: deferred stair submittal and rev 4: changes to site, structural, fire protection and mechanical and rev 5: lighting calculations

Building Address: 1805 E AEROSPACE PW, TUCSON, AZ 85756

Building Owner: PIMA COUNTY
.. 00000-0000

Design Occupancy Load: 800

Occupancy Group: B, F1

Construction Type: IIB

Fire Sprinklers Required: Yes

Building Code Edition: 2012

Issued Date: 02/08/2017

A handwritten signature in black ink, appearing to read "Yves Khawam", is positioned above a horizontal line.

Yves Khawam, PhD. Chief Building Official

Exhibit 16
Affidavit of Carter Volle
February 2017

1 BARBARA LAWALL
2 PIMA COUNTY ATTORNEY
3 CIVIL DIVISION
4 Regina L. Nassen, SBN 014574
5 Andrew L. Flagg SBN 25889
6 Deputy County Attorneys
7 32 North Stone Avenue, Suite 2100
8 Tucson, Arizona 85701
9 Telephone: 520-724-5700
10 Regina.Nassen@pcao.pima.gov
11 Andrew.Flagg@pcao.pima.gov
12 *Attorneys for Defendants*

ARIZONA SUPERIOR COURT
PIMA COUNTY

10 Richard Rodgers, et al.,
11 Plaintiffs,

12 vs.

13 Charles H. Huckelberry, et al.,
14 Defendants.

Case No. C20161761

AFFIDAVIT OF CARTER VOLLE

(The Honorable Catherine Woods)

15 STATE OF ARIZONA }
16 County of Pima } ss.

17 Carter L. Volle, being first duly sworn, upon his oath, deposes and states as
18 follows:

19 1. I am employed as New Building Services Architectural Manager with the
20 Pima County Facilities Management Department. I am a Registered Architect in the State
21 of Arizona. I make this Affidavit based on my personal knowledge.

22 2. I am assigned as the Project Manager for the Facilities Management
23 Department for Project Curvature, overseeing the design and construction of the Facility
24 and Launch Pad located on the County-owned parcel addressed at 1805 E. Aerospace
25 Parkway, Tucson, AZ 85756.

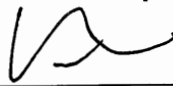
26 3. On December 23, 2016, the Facility was certified as substantially complete.

1 A Temporary Certificate of Occupancy was issued that date, and a Certificate of
2 Occupancy was issued February 8, 2017.

3 4. World View Enterprises has since moved into the Facility and is currently
4 conducting business operations in the Facility.

5 
6 Carter L. Volle, R.A.

7
8 SUBSCRIBED AND SWORN TO before me on February __, 2017, by Carter L.
9 Volle.

10 
11 Notary Public

